

NINTH DAY—(Continued).

Senate Chamber,
Austin, Texas,
November 5, 1935.

The Senate met at 10 o'clock a. m., pursuant to recess, and was called to order by President Pro Tem. W. R. Poage.

Invitation.

Senator Hopkins extended to the Senate an invitation to attend the opening of the Texas Centennial celebration at Gonzales today, and asked unanimous consent that the Senate recess until 5 o'clock p. m. today for that purpose.

Objections were heard.

Senate Bill No. 11.

Pending business was S. B. No. 11. Senator Moore had the floor for discussion of the bill.

Senator Moore yielded to Senator Burns.

Senator Burns received unanimous consent to suspend the regular order of business to send up the following resolution:

S. C. R. No. 9.

Whereas, Texas is now in its Centennial Year, and the people of Texas and its public officials should pause to honor the heroes of this great commonwealth; and,

Whereas, The State of Texas has brought the remains of James Austin Sylvester, bearer of Texas' lone battle flag at San Jacinto, and principal captor of General Santa Anna, from New Orleans, and will re-inter his sacred remains in the State Cemetery, here in Austin; and,

Whereas, Very few of the members of the Legislature of this State have ever visited the State Cemetery and become acquainted with the monuments to the heroes therein erected, and each member of the Legislature should become acquainted with this hallowed burial ground; and,

Whereas, It is proper and fitting that the members of the Senate and the House of Representatives should do honor to the memory of James Austin Sylvester; now, therefore, be it

Resolved by the Senate of Texas, the House of Representatives concurring, That the members of the

Legislature shall go in a body to the State Cemetery to attend the services of this great, deceased hero at 5:00 o'clock p. m.

SHIVERS,
BURNS.

Senator Burns moved to suspend the rule requiring resolutions be referred to a committee.

The motion prevailed.

S. C. R. No. 9 was adopted unanimously.

Message From the House.

The Chair recognized the Door-keeper, who introduced a messenger from the House with the following message:

Hall of the House of Representatives,
Austin, Texas, Nov. 5, 1935.
Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has granted the request of the Senate for the appointment of a conference committee to consider the differences between the two Houses on S. B. No. 5. The following conferees are appointed on the part of the House:

Knetsch, Alsup, McCalla, Duvall, Lindsey.

The House laid on the table by a vote of 101 yeas and 12 nays the following resolution:

S. C. R. No. 6, Requesting the Board of Control to make a survey with reference to the installation of a radio broadcasting system in the Senate.

The House has adopted the following resolution:

H. C. R. No. 13, Granting the Hon. T. O. Davis, Judge of the One Hundred and Twenty-third Judicial District, permission to leave the State during intervals of 1935 and 1936.

The House has passed the following bill and resolutions:

H. B. No. 93, A bill to be entitled "An Act creating a special road law for Childress County, Texas, providing that said county may fund or refund the indebtedness outstanding against its road and bridge fund as of September 14, 1935, setting forth the method of operation; validating the indebtedness proposed to be funded or refunded; validating all acts and proceedings heretofore had by the commissioners' court of said

county and officers thereof, in respect to the funding or refunding of said indebtedness; etc., and declaring an emergency."

H. C. R. No. 7, Granting A. F. Gaston permission to bring suit against the State of Texas or the Highway Department for property damage.

H. C. R. No. 8, Granting S. A. Castlebury permission to bring suit against the State of Texas or the Highway Department for property damages.

H. C. R. No. 12, Authorizing the Enrolling Clerk of the House to correct the caption of House Bill No. 57.

S. C. R. No. 5, Petitioning the heads of the various departments of the State Government to give Veterans of the World War, Veterans of Foreign Wars, and Spanish-American War Veterans, consideration for positions they are competent to fill.

Respectfully submitted,

LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Bill and Resolutions Referred.

H. B. No. 93, referred to the Committee on State Affairs.

H. C. R. No. 7, referred to the Committee on State Affairs.

H. C. R. No. 8, referred to the Committee on State Affairs.

H. C. R. No. 13.

Senator Redditt received unanimous consent to suspend the regular order of business and take up out of order H. C. R. No. 13.

The Chair laid before the Senate on its first reading the following resolution:

H. C. R. No. 13, Granting Hon. T. O. Davis, Judge of the One Hundred and Twenty-third District permission to be absent from the State during the years 1935 and 1936.

Senator Redditt moved to suspend the rule requiring resolutions be referred to a committee.

The motion prevailed.

H. C. R. No. 13 was adopted.

H. C. R. No. 12.

Senator Burns received unanimous consent to suspend the regular order of business and take up out of order H. C. R. No. 12.

The Chair laid before the Senate on its first reading the following resolution:

H. C. R. No. 12, Authorizing the Enrolling Clerk of the House to correct the caption of H. B. No. 57.

Senator Burns moved to suspend the rule requiring resolutions be referred to a committee.

The motion prevailed.

H. C. R. No. 12 was adopted unanimously.

Bills and Resolutions Signed.

The Chair President Pro Tem. W. R. Poage gave notice of signing, and did sign, in the presense of the Senate, after their captions had been read, the following bill and resolutions.

H. C. R. No. 12.

H. C. R. No. 4.

S. C. R. No. 5.

H. B. No. 57.

Senate Resolution No. 14.

Whereas, Ray's Advance Session Laws containing the laws of the First Called Session are now ready for delivery to each member of the Senate for their use and benefit, and the same publication will provide the laws of the second called session promptly after adjournment and action by the Governor on bills, therefore be it

Resolved, That as has been the custom, the Senate subscribe for 40 copies of each issue for the Senators and officers, at \$1.00 per copy, to be paid out of the contingent fund as books are delivered.

Woodruff.

Senator Woodruff moved to suspend the rule requiring resolutions be referred to a committee.

The motion prevailed.

S. R. No. 14 was adopted unanimously.

Senate Bill No. 11.

Senator Woodruff was recognized to send up amendments to S. B. No. 11.

Senator Rawlings requested Senator Woodruff to yield to him to offer his amendment, as a proponent of S. B. No. 11.

Senator Woodruff declined to yield.

Amend S. B. 11 by striking out all below the enacting clause and substituting in lieu thereof the following:

Section 1. The term "open saloon", as used in this act, means any place

where any intoxicants whatever, manufactured in whole or in part by means of the process of distillation, or any liquor composed or compounded in part of distilled spirits, is sold or offered for sale by the drink or in broken or unsealed containers, or any place where any such liquors or sold or offered for sale for human consumption on the premises where sold.

Sec. 2. It shall be unlawful for any person, whether as principal, agent or employee, to operate or assist in operating, or to be directly or indirectly interested in the operation of any open saloon in this State.

Sec. 3. It shall be unlawful for any person who is authorized by law to sell malt or vinous liquors for consumption on the premises where sold, of any person who acts as agent or employee of any person, firm or corporation authorized to sell malt or vinous liquors for consumption on the premises where sold, to have in his possession, at or near the premises where such malt or vinous liquors are sold for such purpose, any liquor produced by the process of distillation or any liquor containing alcohol in excess of Fourteen (14%) per cent by volume.

Sec. 4. Any person who violates any portion of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for not more than one year. Any person who is twice convicted under the provisions of this section shall for the second and all subsequent offenses be punished by fine of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, and by confinement in the county jail for not less than thirty (30) days nor more than one (1) year.

Sec. 5. The fact that the constitution prohibits the operation of an open saloon in this State, and requires the Legislature to define the term "open salon", create an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect

and be in force from and after its passage, and it is so enacted.

WOODRUFF.

Read and pending.

Point of Order.

Senator Moore raised the point of order that the amendment is not a proper substitute, and is not germane and does not conform to the caption of S. B. No. 11.

The Chair President Pro Tem. W. R. Poage overruled the point of order.

Senator Moore sent up the following substitute for the amendment offered by Senator Woodruff.

Substitute by striking out all below the enacting clause and inserting in lieu thereof the following:

(a) The term "open saloon," as used in this Act, means any place where any intoxicants whatever, manufactured in whole or in part by means of the process of distillation or any liquor compounded or composed in part of distilled spirits, other than wines containing not more than seventeen per cent (17%) alcohol by weight, and other than Type "C" liquor as hereinafter defined, are sold or offered for sale in broken or unsealed containers for human consumption on the premises where sold or offered for sale, or where any alcoholic liquor or liquors are sold in violation of this Act.

Type "C" liquor shall consist of any combination or dilution or of any combination and dilution of alcoholic liquor or liquors provided such combination or dilution, or combination and dilution, contains not more than nineteen per cent (19%) alcohol by weight.

Vendors permits to sell Type "B" and Type "C" liquor may be issued only to persons, firms, corporations or associations operating bona fide hotels, dining rooms, clubs, restaurants and dining and/or club cars where such places are equipped to serve and do regularly and customarily serve food. The holder of a vendors permit may not sell in any area any liquor of a type or alcoholic content prohibited in such area.

No person shall be authorized to hold a vendor's permit whose gross sales of food shall not, in any calendar month, exceed his gross sales of liquor. It shall be the duty of the

holders of vendor's permits to make monthly reports under oath of such sales to the Commissioner in accordance with any rules or regulations he may prescribe and if, at any time, his sales of liquor shall exceed his sales of food for any calendar month the Commissioner shall cancel such permit. Any person who shall wilfully and falsely misrepresent the facts concerning such sales shall be guilty of perjury and, upon conviction, shall be punished by confinement in the penitentiary for any term of years not less than one nor more than five.

(b) Any person, whether as principal or agent or employee, who shall operate or assist in operating or who shall be directly or indirectly interested in operating any open saloon in the State shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not more than one year. Any person who is twice convicted under the provisions of this section shall for the second and all subsequent offenses be punished by fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), and by confinement in the county jail for not less than thirty (30) days nor more than one (1) year.

Annual fees for vendors permits shall be as follows:

In cities having a population not exceeding 50,000 according to the last Federal census, \$50.00; in cities having a population not exceeding 100,000, \$100.00; in cities having a population not exceeding 150,000, \$200.00; in cities not exceeding a population of 200,000, \$300.00; in cities having a population exceeding 200,000, \$500.00; outside the corporate limits of any city or town, \$50.00.

The annual fee for vendors permits issued to the owners, operators, lessors, or lessees of railway dining and/or club cars shall be \$5.00 and a separate fee shall be charged for each car.

The Commissioners' Court of each county in the State, whenever they deem it expedient, may order an

election to be held by the qualified voters in said county, or of any justice precinct, incorporated city or town, to determine whether or not the sale of Type "C" liquor shall be prohibited or legalized in said county, justice precinct, incorporated town or city; provided it shall be the duty of said court to order the election as aforesaid whenever petition to do so by as many as ten (10) per cent of the qualified voters of the said county, city or justice precinct, taking the votes for Governor at the last preceding general election as the basis for determining the qualified voters in any such county, incorporated city or justice precinct. After the first local option election held as provided in this section, in any county, justice precinct, incorporated town or city, no subsequent election upon the same issue in the same county, justice precinct, incorporated city or town shall be held for the purpose of determining whether or not such type of liquor shall be legalized or prohibited earlier than one (1) year from the date of the preceding local option election in said county, incorporated city or justice precinct of said county.

When the Commissioners' Court, of their own motion or upon the petition provided for, shall order an election as herein provided in this section, it shall be the duty of said court to order such election to be held at the voting places within such county, city or justice precinct upon a day not less than ten (10) nor more than twenty (20) days from the date of said order, and the order thus made shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity or to clothe the court with jurisdiction to make it valid, have been duly complied with. Said court shall appoint such officers to hold such elections as is now required by law for general elections.

The Clerk of said court shall post or cause to be posted at least one copy of said order in each election precinct in such area affected, for at least six (6) days prior to the day of election, which election shall be held and the return thereof made in conformity with the provisions of the General Laws of the State, and

by the election officers appointed and qualified under such laws.

At said election the vote shall be by official ballot which shall have printed or written at the top thereof in plain letters the words, "Official Ballot." Said ballot shall also have written or printed thereon the words

"For the sale of mixed drinks of not more than 19% alcohol by weight for consumption on the premises where sold.

"Against the sale of mixed drinks of not more than 19% alcohol by weight for consumption on the premises where sold."

The Clerk of the County Court shall furnish the presiding officer of each box with the number of such ballots to be not less than twice the number of qualified voters at such voting box and the presiding officer of each voting box shall write his name on the back of each ballot before delivering same to the voter and each voter offering to vote at such election shall, at the time he offers to vote, be furnished by such presiding officer with one such ballot and no voter shall be permitted to depart with such ballot and shall not be assisted in voting by any person except by such presiding officer or by some officer assisting in the holding of such election under the discretion of such presiding officer when requested to do so by such voter.

Those who favor the sale of Type "C" liquor shall make a pencil mark through the word "Against" and the words immediately following same, and those who oppose the sale of such liquors shall make a pencil mark through the word "For" and the words immediately following same. No ballot that is not an official ballot and that has not the name of the presiding officer of such election written thereon in the handwriting of such presiding officer shall be received or counted.

The officers holding such election shall, in all respects not herein specified, conform to the General Election Laws in force regulating elections and after the polls are closed proceed to count the votes and within three (3) days thereafter make due report of said election to the Commissioners' Court. The provisions of the General Election Laws shall be followed in calling and conducting said election where not inconsistent herewith.

Said court shall hold a special session on the fifth day after the holding of said election, or as soon thereafter as practicable, for the purpose of canvassing the votes and certifying the results, and if a majority of the votes cast at said election are against the sale of Type "C" liquor said court shall immediately make an order declaring the results of said vote, and absolutely prohibiting the sale thereof within such city, county or justice precinct after thirty (30) days from the date of declaring the results thereof, and thereafter until such time as the qualified voters therein may thereafter, at a legal election held for such purpose, by a majority vote of those voting at such election decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes, and declaring the results thereof.

The order of said court declaring the result and prohibiting the sale of Type "C" liquor shall be published by the posting of said order at three (3) public places within the county, city or justice precinct in which the election was held, which fact shall be entered by the county judge on the minutes of the Commissioners' Court. An entry thus made or a copy thereof certified under the hand and seal of the Clerk of the Court shall be prima facie evidence of such posting.

If a majority voting at such election vote for the sale of Type "C" liquor the Court shall make an order declaring the results and have the same entered of record in the office of the Clerk of said Court, whereupon it shall be lawful in such area to sell such liquor in accordance with the terms of this Act until such time as the qualified voters therein may thereafter, at a legal election held for that purpose, by a majority vote, decide otherwise, and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes and declaring the results thereof. It shall be the duty of the County Clerk, within three (3) days after the results of any such election have been declared, to cer-

tify such results to the Secretary of State at Austin.

Vendors permits provided for herein may be issued by the Commissioner. The term "Commissioner" wherever used in this Act shall mean any Commissioner, Officer or Board whose duty it may be to issue permits. Until otherwise provided by law such shall mean, when used in connection with this Act, the Tax Commissioner of Texas.

MOORE.

Read.

Senator Woodruff withdrew his pending amendment by unanimous consent and sent up the following:

Amend S. B. No. 11 by striking out all below the enacting clause and substituting in lieu thereof the following:

Section 1. This Act may be cited as the "Texas Liquor Control Act."

Sec. 2. This entire Act shall be deemed an exercise of the police power of the State for the protection of the welfare, health, peace, morals, temperance, and safety of the people of the State, and all its provisions shall be liberally construed for the accomplishment of that purpose.

Sec. 3. (a) The term "open saloon," as used in this act means any place where any intoxicants whatever, manufactured in whole or in part by means of the process of distillation, or any liquor composed or compounded in part of distilled spirits, is sold or offered for sale by the drink or in broken or unsealed containers, or any place where any such liquors are sold or offered for sale for human consumption or the premises where sold.

(b). It shall be unlawful for any person, whether as principal, agent or employee, to operate or assist in operating, or to be directly or indirectly interested in the operation of any open saloon in this State.

(c). It shall be unlawful for any person who is authorized by law to sell malt or vinous liquors for consumption on the premises where sold, or any person who acts as agent or employee of any person, firm, or corporation authorized to sell malt or vinous liquors for consumption on the premises where sold, to have in his possession, at or near the premises where such malt or vinous liquors are sold for such purpose, any liquor produced by the process of distillation or any liquor containing alcohol in excess of Fourteen (14%) per cent by volume.

(d). Any person who violates any portion of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for not more than one year. Any person who is twice convicted under the provisions of this section shall for the second and all subsequent offenses be punished by fine of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, and by confinement in the county jail for not less than thirty (30) days nor more than one (1) year.

(e) Any person who violates any provision of this Act other than those contained in this Section shall be subject to the penalties prescribed by Sections 41, 42, 43, and 44.

Sec. 3-a. Whenever the word liquor is used in this Act it shall mean and refer to any liquor containing alcohol in excess of four (4) per cent by weight unless otherwise indicated.

Sec. 4. It shall be unlawful for any person to manufacture, transport, or sell any intoxicating liquor without a permit authorizing the manufacture, transportation, or sale as hereinafter provided.

Sec. 5. There is hereby created a Board named the Texas Liquor Control Board, consisting of three (3) persons, all of whom shall be appointed by the Governor, by and with the advice and consent of the Senate, and one of whom shall be designated by the Governor to be Chairman of the said Board, and said members shall receive their actual expenses while engaged in the performance of their duties and a per diem of Ten Dollars (\$10) per day for not exceeding sixty (60) days for any one year. Each member at the time of his appointment and qualification shall be a resident of the State of Texas and shall have resided in said State for a period of at least five (5) years next preceding his appointment and qualification, and he also shall be a qualified voter therein. Of the members initially appointed each shall hold office from the date of his appointment for the following respective terms, and until their respective successors shall qualify: One member for two (2) years, one for four (4) years, and one for six (6) years. Each member may be initially appointed on or sub-

sequent to the date this Act goes into effect. The Governor, at the time of making and announcing the appointment of said three (3) members, as well as in the commission issued by him to each of them, shall designate which of said members shall serve for each of the said respective terms, and also which shall be the Chairman of the Board.

Upon the expiration of each of said terms, the term of office of each member thereafter appointed, shall be six (6) years from the time of his appointment and qualification, and until his successor shall qualify. In case any member shall be allowed to hold over after the expiration of his term, his successor shall be appointed for the balance of the unexpired term. Vacancies in said Board shall be filled by the Governor for the unexpired term. Each member shall be eligible for reappointment in the discretion of the Governor. No person shall be eligible for appointment, or shall hold the office of member of the Board, or be appointed by the Board, or hold any office or position under the Board, who has any connection with any association, firm, person, or corporation engaged in or conducting any alcoholic liquor business of any kind or who holds stock or bonds therein, or who has pecuniary interest therein, nor shall any such person receive any commission or profit whatsoever from or have any interest whatsoever in the purchase or sales made by the Board, or by persons authorized by virtue of this Act to manufacture, purchase, or sell any alcoholic liquors. The soliciting and procuring of an endorsement of any member of the Legislature, for appointment, to any position under the control of the Board, shall disqualify the person receiving such endorsement from holding the position.

The office of the Board shall be in the City of Austin, Texas.

The said Board shall meet at such times within the City of Austin as the Board shall determine, and the members thereof shall be entitled to their reasonable expenses for each meeting so attended, and the per diem hereinabove referred to. A majority of the members shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the Board.

The Board shall appoint an Administrator who shall serve at the Board's pleasure and who shall under the su-

pervision of the Board administer the provisions of this Act. He shall receive a salary not exceeding Five Thousand Dollars (\$5,000) per annum, and shall execute a bond, in the sum of Ten Thousand Dollars (\$10,000) payable to the State of Texas.

The Board and/or Administrator shall appoint all necessary clerks, stenographers, inspectors, and chemists to properly enforce the provisions of this Act. No person shall be eligible for any appointment who has any connection whatever with any person engaged in or conducting any liquor business of any kind in violation of law, or who holds stock or bonds therein, or who has any pecuniary interest therein, nor shall any such person receive any commission or profit whatever from, or have any interest whatsoever in, the purchase or sales made by persons authorized by this Act to manufacture, purchase, sell, or otherwise deal in the liquor business.

The Administrator shall act as manager, secretary and custodian of all records unless the Board shall otherwise order.

The Administrator shall devote his entire time to said office.

The Board and/or Administrator shall fix the duties, salaries, and wages of all employees authorized by this Act but such compensation, salaries, and wages shall not be greater than the salaries fixed for similar positions and duties in other departments of the State government. The salaries herein authorized shall not continue in effect beyond the effective date of the General Appropriation Bill of the Forty-fourth Legislature. The Board shall likewise have power to require any employee authorized by this Act to give bond for the faithful performance of his duties in such an amount as it may deem adequate.

It shall be the duty of the Board, during the month of January of each year, to make a report to the Governor, concerning its administration of this Act.

Sec. 6. Among others, the functions, powers, and duties of the Board shall include the following:

(a) To control the manufacture, possession, sale, purchase, transportation, importation, and delivery of liquor in accordance with the provisions of this Act, and make all necessary rules and regulations to fully and effectually accomplish such purpose.

(b) To grant, refuse, suspend, or cancel permits for the purchase, transportation, importation, sale, or manufacture of liquor or other permits in regard thereto.

(c) To investigate and aid in the prosecution of violations of this Act and other Acts relating to liquor, to make seizure of liquor manufactured, sold, kept, imported, or transported in contravention hereof, and apply for the confiscation thereof whenever required by this Act, and cooperate in the prosecution of offenders before any Court of competent jurisdiction.

(d) To exercise all other powers, duties, and functions conferred by this Act, and all powers, incidental, convenient, or necessary to enable it to administer or carry out any of the provisions of this Act to publish all necessary rules and regulations and mail the same to all interested parties.

(e) In the event the United State government shall provide any plan or method whereby the taxes on liquor shall be collected at the source, the Board shall have the right to enter into any and all contracts and comply with the regulations, even to the extent of partially or wholly abrogating any provision hereof which may be in conflict with Federal law or regulations to the end that the Board shall receive the portion thereof allocated to the State of Texas, and to distribute the same as in this Act provided.

Sec. 7. The Board, the Administrator and any inspector under the direction of the Board, shall, for the purposes contemplated by this Act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, documents, and testimony.

If a witness in attendance before the Board or one of its authorized representatives, refuses without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book, record, or paper when ordered to do so by the Board, the Board may apply to the Judge of the District Court of any county where such witness is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two (2) or more than five (5) days, directing such witness to show cause before the Judge who made the order, of any other Dis-

trict Judge of said county, why he should not be punished for contempt; upon the return of such order the Judge before whom the matter shall come on for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or, to produce a book, record, or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of Court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the District Court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Board shall be paid their fees and mileage by the Board out of funds herein provided.

Sec. 8. No person shall import into this State any liquor, in excess of two quarts, from any source unless a permit be first obtained from the Board, and any person so purchasing or importing liquor in violation of this Section shall be subject to the penalties hereinafter provided. In addition to the penalties hereafter provided, any person violating the provisions of this Section shall forfeit the liquor so imported to the Board as herein provided.

Sec. 9. It shall not be necessary to any information, complaint or indictment to negative any exception contained in this Act concerning any prohibited Act; provided however, that any such exception made herein may be urged as a defense by any person charged by such complaint, information or indictment.

Sec. 10. Every applicant for a brewer's, distiller's, winery, rectifier's, wholesaler's, beer and wine wholesaler's, package store, or retailer's permit, under this Act shall give notice of such application by publication once a week for three consecutive weeks in the newspapers published in the city or town in the county in which applicant's place of business is located. In those counties in which no newspapers are published, the notice shall be published in qualified newspapers published in the closest neighboring county. The Board may require of every applicant for a permit the recommendation in writing of the County Judge of the county of his residence

and it shall take such recommendation into consideration before granting or refusing such license. The Board shall have authority to issue temporary permits for periods not exceeding ninety (90) days immediately following the passage of this Act, but not thereafter.

Sec. 11. The Board shall refuse to issue a permit to any applicant if it has reasonable grounds to believe any of the following to be true :

(a) That an applicant to sell at retail has been provided with funds by or has any connection with a manufacturer of, or wholesale dealer in, liquor.

(b) That the applicant is in the habit of using alcoholic beverages to excess or habit-forming drugs.

(c) That the applicant has been convicted or violating any of the alcoholic liquor laws of this State, general or local, or any rule or regulation promulgated in pursuance hereof, or has been convicted at any time of a felony.

(d) That there is any other reason which, in the the opinion of the Board based on general welfare, health, peace, morals, and safety of the people, warrants its refusal to grant such permit.

Sec. 12. The Board and/or Administrator shall cancel or suspend after notice and hearing any such permit granted if it is found that any of the following are true:

(a) That the permittee has violated any provision of this Act or Acts amendatory thereof or any rule or regulation of the Board.

(b) That the permittee had made any false representations or statements to the Board in order to induce or prevent action of the Board.

(c) That the permittee is not maintaining an acceptable bond.

(i) That any retail permittee is acting as an agent of a manufacturer or wholesaler of alcoholic liquors, or has borrowed money or property or accepted gratuities therefrom, or has any connection therewith.

(e) That the permittee maintains a noisy, lewd, disorderly, or unsanitary establishment and has been supplying impure or otherwise deleterious beverages.

(f) That the permittee is insolvent or incompetent or physically unable to carry on the management of his establishment.

(g) That the permittee is in the

habit of using liquor or habit-forming drugs to excess.

(h) That the permittee knowingly has sold liquor to persons under twenty-one (21) years of age, to persons known to be drunkards, or to persons visibly intoxicated at the time of sale.

(i) That the permittee has misrepresented to a customer or the public any liquor sold by him.

(j) That the permittee has ever been convicted of a felony.

(k) That there is any other season which, in the opinion of the Board, based on the general welfare, health, peace, morals, and safety of the people of the State, warrants cancelling or suspending such permit.

The governing authorities of any city or town or the Commissioners Court of any county shall have power to institute proceedings for the revocation or suspension of any permit granted hereunder. Such proceedings may be instituted by the filing of a complaint with the Board, and it shall be the duty of the Board to forthwith hear the same in accordance with the terms of this Act.

Notice of cancellation or suspension, stating the reason therefor, shall be served upon the permittee, or upon whatever person may be in charge temporarily, or otherwise, of the licensed premises, or shall be affixed to the outside of the door of the licensed premises, or shall be sent by United States registered mail addressed to the permittee at the licensed premises, and said cancellation notice shall be published by the Board once a week for three (3) consecutive weeks in the county in which the licensed premises are located, or if no newspaper is published in said county, in a newspaper in a neighboring county. Cancellation or suspension shall take effect upon the affixing, service, delivery, or first publication of such notice. Such affixing, service, or delivery, or publication of a cancellation or suspension shall be adequate notice to all parties concerned. The publication or posting of such notices shall be privileged.

In the event of resort to any Court from an order of cancellation or suspension in whatever form the proceedings may be brought, it shall in no wise act as a supersedeas of the order of cancellation or suspension. The permit so cancelled or suspended shall stand cancelled pending the final disposition of the proceedings as herein-

after conditioned. No refund of permit fees shall for any reason be made by the Board.

All notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. It is further provided that the certificate of the Board or the Administrator concerning any rule or regulation or other order promulgated under the terms hereof shall be prima facie evidence of the validity thereof, and the same shall be admissible as evidence in all Courts in this State.

Sec. 13. Any license granted under this Act shall be a purely personal privilege, good for the year in which issued, and ending on December 31st of each year at 12 o'clock midnight, and revocable for the causes herein stated, subject to appeal as hereinafter provided, and shall not constitute property, nor shall it be subject to attachment or execution, nor shall it descend by the laws of testate or intestate devolution, but shall cease upon the death of the licensee; provided, that the Board may, by regulation, provide for the time and manner in which the successor in interest of any deceased, insolvent, or bankrupt licensee may dispose of alcoholic liquors left on hand by the licensee.

Sec. 14. And in the event of any person being aggrieved by any decision, rule, or order of the Board, such person shall have the right of appeal therefrom to the District Court of the county in which a decision, rule, or order in such case would become effective, said suit to be against the Board alone as defendant, and such suit shall be tried de novo, and be governed by the same rules as other suits in said Court, and during the pendency of such suit the order of the Board may be suspended by interlocutory order of the Court pending a hearing on its merits. Such cause shall be tried before the Judge of such Court within ten (10) days after the docketing of the cause, or in the earliest possible time after such ten (10) day period, in the event the Judge is not able to try such cause within such ten (10) day period.

Sec. 15. Permits shall be of the following classes: Brewers, distillers, winery, rectifiers, wholesalers, beer and wine wholesalers, package stores, retailers, agents, industrial, medical carriers, private carriers, cartage, and storage.

(a) Brewer's Permit. A brewer's

permit shall authorize the manufacture and sale of malt beverages containing alcohol in excess of four (4%) per centum by weight. The annual license fee shall be Two Thousand Dollars (\$2,000). It shall be unlawful for any person holding a brewer's permit to sell malt beverages to any person who is not the holder of a permit authorizing him to purchase such malt beverages under this Act except when such malt beverages are sold and delivered to persons in other States.

(b) Distiller's Permit. A distiller's permit shall authorize the manufacture of spirituous beverages containing alcohol in excess of four (4%) per centum by weight and the rectification of the same. Such permit shall also authorize the importation into this State of alcoholic spirits including ethyl alcohol for use in or as ingredients in the manufacture of alcoholic spirituous beverages, but for no other purpose, and in no event for resale in this State. It shall be unlawful for any person holding a distiller's permit to sell such spirituous beverages to any one other than the holder of a wholesaler's permit under this Act unless the same be sold and delivered to a person outside this State. The annual license fee for distillers shall be Two Thousand Dollars (\$2,000).

(c) Winery Permits. A winery permit shall authorize the holder thereof to manufacture, bottle, package, and label wine, said permit shall also authorize the holder thereof to manufacture grape brandy to be used exclusively for fortifying purposes by its holder on the premises for which issued. The term "wine," wherever used in this Act, shall mean the product obtained from the normal alcoholic fermentation of the juice of sound ripe grapes, fruits and berries, (other than dried grapes, fruits and berries); or any such product fortified with grape brandy and containing not more than seventeen (17%) per cent of alcohol by weight. It shall be lawful for any person holding a winery permit to sell wine direct to any other permittee and to the ultimate consumer in unbroken packages for off premises consumption. The annual license fee for such winery shall be Fifty Dollars (\$50) per annum.

A class "B" winery permit shall authorize the holder thereof to manufacture, bottle, package, and label wine where the grapes, fruits, and

berries used in the manufacture of said wine have been produced solely within the county where such wine is manufactured. The annual license fee for such class "B" winery shall be Ten Dollars (\$10) per annum.

Nothing in this Act shall be construed to prevent or prohibit the manufacture of wines by the fermentation of grapes, fruits, and berries by an individual for consumption where the same is to be consumed and used by said individual and not sold or offered for sale.

(d) Rectifier's Permit. For the purpose of this Act "rectifier" means and includes any person who rectifies, purifies, or refines distilled spirits or wines other than vermouth by any process other than as provided for on distillery premises or who by mixing such spirits, wine, or other liquors for sale under the name of whiskey, brandy, gin, rum, spirits, cordials, bitters, or any other name other than vermouth. A rectifier's permit shall authorize the rectification and sale of alcoholic spirituous liquors to the holders of wholesale permits only unless such liquors are sold and delivered to persons outside the State. Such permit shall also authorize rectifiers to import into this State alcoholic spirits for exclusive use as ingredients in the preparation of alcoholic liquors, but shall not authorize the importation of any such spirits for resale without rectification. The annual license fee shall be Two Thousand Dollars (\$2,000).

(e) Wholesaler's Permit. A wholesaler's permit shall authorize the holder to purchase liquor from persons authorized by law to manufacture and sell the same in this State and to import such liquor from points outside the State and to sell the same to holders of permits in this State at wholesale. Such permit shall also authorize the holder thereof to sell and deliver such liquor to persons outside this State. It shall be unlawful for the holder of such a permit to sell such liquor in this State to any other person than the holder of a permit lawfully entitling him to purchase and receive the same from such wholesaler. Except as is specifically authorized for rectifiers, beer and wine wholesalers and distillers, it shall be unlawful for any other person than the holder of a wholesaler's permit to import liquor

into this State. Wholesale druggists possessing the necessary qualifications, as well as other qualified persons, shall be entitled to a wholesaler's permit. The annual license fee shall be Two Thousand, Five hundred Dollars (\$2,500).

(f) Beer and Wine Wholesaler's Permit. A beer and wine wholesaler's permit shall authorize the holder thereof to purchase alcoholic malt and vinous beverages containing alcohol in excess of four (4%) per centum by weight from brewers, wineries and wine manufacturers holding permits in this State and to import such liquors from other States and to sell the same at wholesale only to the holders of permits in this State who are authorized to purchase and receive the same; such permit shall also authorize the holder thereof to bottle, package or label wines purchased from wineries or wine manufacturers either within or without this State; such permit shall also authorize the holder thereof to sell and deliver such liquor to persons outside of this State. The annual fee shall be Two Hundred and Fifty Dollars (\$250).

(g) Package Store Permit. A package store permit shall authorize the holder thereof to purchase the liquor specified in the permit from the holders of winery, wholesaler's and beer and wine wholesaler's permits. Such permit shall authorize the holder to sell at retail to consumers in unbroken packages only and not for consumption, on, at, or near the premises where sold, provided that a hotel as herein defined which has secured a package store permit may deliver liquor at retail in unbroken packages to the rooms of bona fide guests of such hotels for consumption in such rooms. It shall be unlawful for the holder of a package store permit to break or open any package or container containing liquor on, at, or near his premises or to sell, barter, exchange, deliver, or give away any drink or drinks of liquor to any person from a package or container that has for any reason been opened or broken on, at, or near his premises, or to sell liquor in packages containing less than one-half pint.

Package stores shall not have curtains, hangings, signs or any obstruction which will prevent a clear view

at all times of the interior of the store; provided nothing contained herein shall prevent a drug store having a permit from their window display of drug merchandise.

Hotels and drug stores as herein-after defined, as well as other qualified persons, may obtain package store permits. The annual license fee for a package store permit shall be:

In cities and towns having a population of three thousand (3,000) inhabitants or less, according to the last preceding Federal Census, the fee shall be One Hundred Dollars (\$100) in cities and towns having a population of more than three thousand (3,000) and less than five thousand (5,000) inhabitants, according to the last preceding Federal Census, the fee shall be Two Hundred and Fifty Dollars (\$250); in cities and towns having a population of more than five thousand (\$5,000) and less than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, the fee shall be Three Hundred and Fifty Dollars (\$350); in cities and towns having a population of more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, the fee shall be Five Hundred Dollars (\$500).

(h) Agent's Permit. No person shall act as agent or salesman for the sale of, or for taking or soliciting orders for the sale of any liquor irrespective of whether such sale is to be made within or without the State, unless such person shall have an agent's permit. In applying for such permit such agent shall set forth the name and address of each and every person whom he represents, and shall furnish such other information as may be required by the Board. It shall be unlawful for any agent to represent any person whose name does not appear upon said permit as his employer or to act as agent or salesman for any other person not named therein. The annual license fee for such permit shall be Five Dollars (\$5).

(i) Industrial Permit. No provision of this Act shall apply to alcohol intended to be used for industrial, mechanical and scientific purposes. Industrial permits may be issued to persons desiring to import, transport and use alcohol for use in the manufacture and sale of any of the following:

- (1) Denatured alcohol;
- (2) Patent, proprietary, medicinal, pharmaceutical, antiseptic and toilet preparations;
- (3) Flavoring extracts, syrups, and food products;
- (4) Scientific, chemical, mechanical, industrial, and medicinal products and purposes.

It shall be unlawful for any person to knowingly sell any of the products enumerated in paragraph (1), (2), (3), and (4), for beverage purposes or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purpose.

It shall be unlawful for any person to purchase, transport, or use alcohol for any purpose enumerated in this section unless and until he shall have secured an industrial permit; provided, however, that nothing contained in this section shall restrict the purchase, sale, or possession without any permit therefor of denatured alcohol by any person after the same has been so produced and so long as it shall retain its character as denatured alcohol. The annual license fee for an industrial permit shall be Ten Dollars (\$10).

(j) Carrier's Permit. The word "carrier" when used in this section shall mean and include steam and electric railway carriers and common carrier motor carriers operating under a certificate of convenience and necessity issued by the Railroad Commission of Texas and/or such certificates issued by the Interstate Commerce Commission. The holder of such certificates shall be authorized to transport liquor into and out of this State and between points within this State. Such carriers shall furnish such information concerning the transformation of liquor in this State or between points in this State as shall be required by them. It shall be unlawful for any such carrier to transport and deliver liquor to any person in a dry area in this State unless the same be for a lawful purpose as defined in this Act.

The restrictions contained in this section shall not apply to steam railway carriers and certified common carrier motor carriers when in the course of an interstate or foreign shipment of liquor it is necessary for

them to cross this State in the course of such transportation.

The annual license fee for a carrier's permit shall be Five Dollars (\$5).

(k) Private Carrier's Permit. Brewers, distillers, wineries, rectifiers, wholesalers, beer and wine wholesalers, distributors, and manufacturers shall be entitled to transport liquor owned in good faith by them from the place of sale or distribution to the purchaser, upon vehicles owned in good faith by such permittees when such transportation is for a lawful purpose; provided, however, that such permittees shall not be permitted to engage in the business of transporting for hire such liquor in violation of the motor carrier laws of this State, and any such permittee desiring to engage in such business shall first secure a certificate or permit, as the case may be, from the Railroad Commission of Texas under the terms of the motor carrier laws, and shall be required to comply with the provisions of such laws. Motor vehicles used for such transportation shall be fully described in the application for a private carrier permit and such application shall contain all information which shall be required. Motor vehicles used by permittees for the transportation of liquor within this State shall have printed or painted on both sides of said vehicles the trade or business name of the holder of the permit and also the number of the private carrier permit. It shall be unlawful for any permittee above named to transport liquors in any vehicle not fully described in the application for the permit. Any permittee violating any rule or regulation promulgated in pursuance of this section shall have his private carrier permit cancelled and shall not be permitted to transport any liquor in any vehicles owned by him for a period of two (2) years. It shall further be unlawful for any permittee to transport liquor without first having obtained a private carrier permit. The annual license fee for such permit shall be Five Dollars (\$5.00).

(l) Local Cartage Permit. The Board is hereby authorized to issue Local Cartage Permits to warehouse or transfer companies desiring to transport liquor within the corporate limits of any city or town and its

environs within this State. It shall be unlawful for any person to transport liquor within any city or town or its environs unless and until he shall have secured such permit or to transport the same in violation of the motor carrier laws of this State. In the case of local cartage, liquors shall not be transported by the holder of such Local Cartage Permit unless and until a description of the vehicle or vehicles used in such transportation shall be furnished, including the engine number, date of manufacture, highway license number and such other information as may be required by the Board; and each such vehicle shall be plainly marked or lettered in such manner as to plainly indicate that such vehicle is being used for the transportation of liquors by the holder of a Local Cartage Permit. The transportation of liquor by the holder of a permit in any vehicle not so described and marked shall be unlawful and shall constitute grounds for the cancellation of such permit. In the event such Local Cartage Permit is cancelled for a violation of this provision or for violation of any rule or regulation promulgated in pursuance of this Section, such cancellation shall operate as a bar, both as against all of the vehicles owned and operated by such local cartage permittee, as well as against the holder of such permit for a period of two (2) years. It shall be unlawful for the holder of a Local Cartage Permit to transport liquor between incorporated towns or cities in this State unless and until he shall have fully complied with the requirements of the motor carrier laws of this State governing the issuance of "Carrier" permits. The annual license fee for Local Cartage Permits shall be Five Dollars (\$5).

(m) Storage Permit. The holders of brewery, distillery, winery, rectifier, wholesaler and beer and wine wholesaler permits shall be authorized to secure Storage Permits for one or more private warehouses for storage purposes at their place of business for liquors owned by them without being required to pay any additional permit fees. Such permittees shall also be authorized to store liquors owned by them in public bonded warehouses that have secured storage permits as herein-after provided. Each separate ware-

house, public or private, used by any permittee for storage purposes shall be separately licensed. No permit shall be granted for the storage of liquor in any dry area except for medical or other lawful purposes. When liquors are stored by permittee at any warehouse, public or private, it shall be his duty to report the quantity and character of liquor so stored to the Board. Warehouses, both public and private, shall report to the Board within twenty-four (24) hours any and all withdrawals of liquor from storage, giving the quantity and character of liquor so withdrawn, by whom withdrawn, where and how shipped, together with a statement of the quantity and character of liquor remaining in storage to the credit of the account from which withdrawal was made, it being the intent of this Section to provide the Board with a perpetual inventory of liquor stocks in storage at all times. Permittees desiring to store liquors in public or private warehouses shall furnish all information which shall be required and observe all regulations which may be promulgated in pursuance of this Section. The annual license fee to be paid by permittees for storage in public warehouses shall be Fifty Dollars (\$50) and no liquor shall be stored in other than warehouses which have secured a permit as hereinafter required.

All warehouses, both public and private, desiring to receive and store liquor for permittees shall apply for a permit and shall furnish such information concerning liquor stored and withdrawn from such storage as may be required under any rule or regulation adopted in pursuance of this Section. Such warehousemen shall give a surety bond in such amount as may be required of them. The annual license fee for public warehousemen receiving and storing liquor shall be Fifty Dollars (\$50) and no permit shall be issued to a public warehouse other than a bona fide bonded warehouse that derived at least fifty per cent (50%) of its gross revenue from the storage and handling household goods, or merchandise other than liquors. Annual permits for private warehouses may be issued to holders of brewery, distillery, winery, rectifier, wholesaler or beer and wine wholesaler permits, for the storage of their own

liquors on their own premises without additional fees.

(n) Medicinal Permit. Retail Druggists, hospitals, sanitariums and other like businesses and institutions shall be entitled to receive a permit to purchase and sell to qualified persons liquors for medicinal purposes. Medicinal permits shall allow the holders thereof to purchase liquor for medicinal purposes only from persons holding wholesaler's permits under Subsection (e) of this section; it shall be unlawful for the holder of a medicinal permit to purchase liquor from any other persons than the holders of such wholesaler's permits. This section shall apply to wet and dry areas. Such businesses and institutions shall secure permits before handling liquor and no such permits shall be issued for any other than strictly medicinal purposes. Provided that the drug store applying for permit shall have been in operation for a period of two (2) years prior to applying for such permit. Provided nothing contained herein shall prohibit or interfere with bona fide drug stores or pharmacies obtaining a supply of alcohol for the manufacture of medicinal preparations unfit for beverage use, or the compounding of prescriptions in the practice of pharmacy. Nor shall anything contained herein prevent or prohibit bona fide or chartered schools, colleges or universities from obtaining alcohol for scientific or laboratory use. Such businesses and institutions shall keep such records of sales and purchases as may be required by regulations issued in pursuance of this section.

No such liquors shall be dispensed, sold, or delivered to any person in this State except upon the prescription of a physician licensed to practice medicine in the State of Texas and who is not addicted to the use of any narcotic drug. Such physician shall not prescribe more than one pint of liquor to any person at any one time. A copy of each prescription issued by a physician shall be preserved by the pharmacist or druggist filling such prescription for a period of two (2) years. Any physician or druggist conspiring with a druggist or physician for the handling of prescriptions to be used for the dispensing of liquor for beverage purposes shall both be deemed guilty of a misdemeanor and upon

conviction thereof shall be fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) and each prescription so issued shall constitute a separate offense. Prescriptions for liquor must be signed by the physician, using his legal signature as he customarily signs it and each prescription must bear the date and name and address of the patient. Prescriptions for liquor must be filled within twenty-four (24) hours after the time of issuance. Such prescription so filled shall be subject to inspection and if any druggist or pharmacist shall sell any liquor without a physician's prescription thereof or for any other purpose than medicinal purposes his permit shall be cancelled and he shall be denied the right to handle liquor for medicinal or any other purpose for a period of two (2) years. Any physician who shall prescribe liquor for any other than medicinal purposes shall be denied the right to issue prescription for liquor for a period of two (2) years. Physicians desiring to issue prescriptions for liquor for medicinal purposes shall apply for and obtain a permit therefor. It shall be unlawful for a physician to issue a prescription for liquor for medicinal or other purposes unless and until he shall have obtained such a permit. The annual license fee for physician's permit shall be Five Dollars (\$5). The annual license fee for druggists or pharmacists permits in dry areas shall be Fifty Dollars (\$50); in wet areas the annual license fee for druggists or pharmacists shall be the same as the annual license fees for package stores in such areas.

(o) All license fees levied by this Act shall be paid in advance for one year unless such fee be collected for only a portion of the licensing year. In such event the fee required shall cover the period of time from the date of the license to midnight of August 31st succeeding, and only the proportionate part of the fee levied for such license shall be collected. The fractional part of any month remaining shall be counted as one month in calculating the fee that shall be due.

(p) All license fees fixed by this Act, except agent's industrial, medicinal, carrier's, private carrier's, and

storage, shall be collected one-half by the State, one-fourth by incorporated cities or towns, and one-fourth by the counties wherein the places of business of said permittees are located. It is intended hereby that the license fee prescribed shall be the total fees levied and collected against any permittee and in no event shall a city or town or the Commissioners Court of any county levy and assess more than one-fourth of the fees herein prescribed for permittees.

(q) Retailer's Permit. The Board is authorized to issue Retailer Permits. The holders of such permits shall be authorized to sell from broken packages for consumption on the premises where sold vinous and malt beverages that do not contain alcohol in excess of fourteen per cent (14%) by volume. The holder of such permit shall also be authorized to sell malt beverages of less than four per cent (4%) alcoholic content by weight, without securing any other permit or license relating to said malt beverage and provided for elsewhere in this Act.

The annual license fee for a retail permit shall be Sixty Dollars (\$60); provided that if same is issued for a dining car it shall be Five Dollars (\$5) for each car; provided, however, that a dining car permit shall be inoperative in any dry area, as the same is defined in this Act.

(r) It shall be unlawful for any person authorized to sell wine or beer for consumption, where sold, to have in his possession on his premises any distilled spirits of any character and/or liquor composed in whole or in part of distilled spirits.

Sec. 15a. Nothing in this Act shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any source, whatsoever, whether from within the limits of the State of Texas or from outside the State; nor shall any fee or tax be charged, directly or indirectly, for the exercise of this right. The Board shall have the power and authority to make rules and regulations concerning the importing of any such wine, for the purpose of preventing any unlawful use of such right.

Sec. 16. All bonds required by

this Act shall be executed by a surety company duly authorized and qualified to do business in this State. No surety may cancel or annul any surety bond required except with the consent of the Board. The Board shall not cancel any surety bond until said surety company shall have paid and discharged in full all of its liability upon said bond to the State to the date of said cancellation. The holders of all permits except carriers shall be required to make bonds in sums not less than One Thousand Dollars (\$1,000) and not exceeding Twenty-five Thousand Dollars (\$25,000). The Board, in its discretion, may fix the amount of bond which shall be required for each class of permittees. All bond required of permittees shall be payable to the State of Texas conditioned that so long as the applicant holds such permit unrevoked he will not violate any of the provisions of any of the laws of this State relating to the traffic in, transportation, sale or delivery of liquor or any of the rules or regulations of the Board, and in the case of such permittees as are required to account for taxes and fees that such permittees will account for any pay all license fees and taxes levied by this Act.

Sec. 17. No person holding a permit under this Act that authorizes the retail sale of liquor, and no officer, employee, or agents thereof shall acquire or hold or own or possess either in his own name or in the name of any other person, by means of the ownership of corporate stock in a corporation, holding any wholesaler's, brewer's distiller's winery, rectifier's or beer wholesaler's permit, or by means of any participating interest or other interest, or by means of any title or device or trusteeship or otherwise, any financial interest in or to any of said last named permits, or in and to the business thereof, or in and to any company or corporation holding any such permits nor shall the holders of permits to distill, rectify, or manufacture liquor or engage in the business of selling such liquor at wholesale own any such interest in the business or premises of the holder of a permit authorizing the retail sale of liquor. The license of any person holding a permit authorizing him to sell liquor

at retail who shall have any such interest in the business of any such permittees, or who shall knowingly permit any of his officers, employees or agents to so hold the same, shall be subject to cancellation by the Board.

Sec. 18. No person who has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this Act. No permit shall be issued to a corporation unless the same be incorporated under the laws of the State and unless at least fifty-one per cent of the stock of the corporation is owned at all times by citizens who have resided within the State for a period of three years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to corporations, either domestic or foreign, that were doing business in this State prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation holding a permit under this Act who shall violate any provision hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file a suit for such cancellation in a District Court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's industrial, medicinal and carrier's permits.

Sec. 19. If any permittee shall be convicted for the violation of any provision of this Act, or of any rule or regulation of the Board, and no appeal is pending, his bond shall be forfeited and the board may, in its own name, institute action upon such bond for the benefit of the State. Upon proof of such conviction the Court before whom such suit is brought shall render judgment in favor of the board for the amount of the bond, costs and disbursements.

Sec. 20. All persons having any liquor on hand in this State, shall,

within thirty (30) days from the effective date of this Act, make a true inventory and report of such liquor to the Board and shall pay the taxes herein levied and assessed. Failure to report and pay the taxes on any such liquor shall render the same subject to confiscation by the Board as is herein provided, and shall operate as a bar to such person receiving any character of permit under this Act.

Sec. 21. There is hereby levied and imposed in addition to the other fees and taxes levied by this Act the following:

(a) A tax of eighty (80) cents per gallon on each gallon of spirituous alcoholic liquor, sold or offered for sale in this State except denatured and industrial alcohol. All of said tax shall go to the State.

(b) A tax of five (5) cents on each gallon of still wine that does not contain over fourteen (14) per cent of alcohol by volume sold or offered for sale in this State.

(c) A tax of ten (10) cents on each gallon of still wine containing more than fourteen (14) per cent and not over twenty-four (24) per cent of alcohol by volume, sold or offered for sale in this State.

(d) A tax of fifty (50) cents on each gallon of still wine containing alcohol in excess of twenty-four (24) per cent by volume, sold or offered for sale in this State.

(e) A tax of twenty-five (25) cents on each gallon of natural sparkling wines sold or offered for sale in this State.

(f) A tax of twenty-five (25) cents on each gallon of artificially carbonated wine sold or offered for sale in this State.

(g) A tax of fifteen (15) cents on each gallon of malt liquor containing alcohol in excess of four (4) per cent by weight sold or offered for sale in this State.

The tax herein levied shall be paid by affixing stamps on each bottle or container of liquor. Said stamps shall be affixed on strict accordance with any rule or regulation promulgated in pursuance of this Act.

It shall be the duty of the holders of wholesaler's, beer and/or wine wholesalers and winery permits to affix said stamps on each bottle or container of liquor and to cancel the

same by writing or printing thereon his name except as otherwise herein provided. In the case of wines the stamp shall be affixed to the original container and no further stamps shall be required if a portion or the whole of said contents of said original container be removed for resale as provided for in this Act. In case any bottle containing liquor be enclosed in a sealed metal container the affixing and cancellation of said stamps may be governed by rules and regulations promulgated hereunder that may allow for the affixing of said stamps to such metal container; provided that when stamps have been once affixed, as provided in this Act no other or further stamps shall be required, regardless of how often such liquor may be sold or resold within the State; provided further that the stamps shall be affixed in such manner that their removal will require continued application of steam or water. Every holder of a wholesaler's permit shall, upon receipt of a shipment of liquor for sale within this State, under the provisions of this Act, within twenty-four (24) hours after receiving the same and before it is offered for sale, prepare a true invoice thereof and give such other information in respect thereto as may be required by rules and regulations. Any holder of a wholesaler's permit, a distiller's permit, rectifier's permit, beer and/or wine wholesaler's permit or a brewer's permit, having in possession any liquor intended for shipment to any place without the State, shall keep such liquors in a separate compartment from that of liquors intended for sale within the State so that the same may be easily inspected and shall attach to each such package of liquor so intended for shipment without the State a stamp of the kind and character that shall be required by proper rule or regulation denoting that the same is not intended for sale within the State. When such liquors are so kept and so stamped no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of the sum of twenty-five cents (25) shall be made for every such stamp. All such permittees authorized to transport liquor beyond the boundaries of this State shall furnish duplicate copies of all invoices for the sale of such liquors

within twenty-four (24) hours after such liquors have been removed from their place of business.

Sec. 22. Whenever any of the persons licensed under this Act fail to account for any taxes or license fees levied herein, or defaults in any of the conditions of his bond, or fails or refuses to pay the Board any obligation or liability, forfeiture or penalty imposed upon him by this Act, the Board shall report the same to the Attorney General who shall immediately institute the necessary action in a District Court of Travis County, Texas, and the county and district attorneys of the various counties of the State shall likewise assist the Board in the performance of this duty.

Sec. 23. Whenever the term "dry area" is used in this Act it shall mean and refer to all counties, justice precincts, incorporated cities or towns wherein the sale of intoxicating liquors had been prohibited by valid local option elections held under the laws of the State in force at the time of the taking effect of Section 20, Article XVI, Constitution of Texas, in the year 1919. It likewise shall mean and refer to any such area where such sale shall be prohibited under the terms of this Act.

The term "Wet area" shall mean and refer to all counties, justice precincts, incorporated cities or towns where the sale of intoxicating liquors had not been prohibited by local option elections held under the laws of the State and in force at the time of the taking effect of Section 20, Article XVI, Constitution of Texas, in the year 1919. "Wet arear" shall likewise mean and refer to any such area as shall, under the terms of this Act, by local option election, vote to legalize the sale of intoxicating liquors.

Neither the term "wet area" nor "dry area" shall in any wise modify the status of counties or their political subdivisions that have held or shall hereafter hold local option elections under the provisions of Chapter 116, Acts of the Regular Session of the Forty-third Legislature.

The word "person" or "persons," whenever used in this Act, shall be held and construed to mean and include persons and firms, associations and corporations, whether acting by

themselves or by a servant, agent or employee. The Courts of this State shall take judicial knowledge of the status of wet and dry areas as herein defined in any criminal prosecution instituted, either by complaint, information or indictment.

Sec. 24. In any city where the sale of liquor as herein defined is prohibited by its charter from being sold in its residence section, or any part thereof, such charter amendment shall remain valid and continue effective until such time as said charter provision may be repealed or amended as provided by law.

Sec. 25. No sale or delivery of liquor shall be made on or from the premises of the holder of any permit (except upon the prescription of a duly licensed physician):

(a) Between ten o'clock P. M. and seven o'clock A. M. on any day;

(b) On any day on which any primary or general election is being held either State or National, in the District in which the permittee is located;

(c) On any day on which an election either county or municipal, is held in the municipality in which the permittee is located;

(d) On Sundays;

(e) No liquor shall be sold at any time within three hundred (300) feet of any church or school.

Sec. 26. It shall be unlawful for the holder of any permit selling liquor at retail, in broken packages, to employ in his place of business any person to sell, deliver or otherwise handle any liquors under the age of twenty-one years. It shall further be unlawful for any person to knowingly sell, deliver or give away any liquor to any person under the age of twenty-one years, or to any person who is visibly intoxicated, or to any person known to be an habitual drunkard or to any insane person.

Sec. 27. No person shall transport into this State or between points in this State upon any public highway any liquor unless the person accompanying and in charge of such shipment shall have present and available for exhibition such bills of lading, evidence of ownership, or shipment as the Board may, by rules and regulations require, and no person shall refuse to exhibit or permit to be read or examined any such bill of lading, evidence of ownership, or

shipment, by any agent or employee or deputy of the Board or any peace officer of this State.

Sec. 28. If any person shall forge or counterfeit or cause or permit to be forged or counterfeited any stamp, die, plate, official signature, certificate, evidence of tax payment, permit, license, or other instrument, or any part of any stamp, die, plate, official signature, certificate, evidence of tax payment, permit, license, or other instrument, which has been provided for in this Act or which shall hereafter be provided for, or shall knowingly utter, use or pass the same, he shall be deemed guilty of a felony and shall be punished by confinement in the State Penitentiary for any term of years not less than one or more than five (5).

Sec. 29. Any room, building, boat, structure, or place of any kind where liquor is sold, manufactured, bartered, or given away in violation of this Act, or of any rule, or regulation of the Board, or where persons are permitted to resort for the purpose of drinking liquor in violation of the law, or any place where such beverages are kept for sale, barter, or gift in violation of law, and all liquor and all property kept and used in said place, hereby are declared to be a common nuisance and any person who maintains or assists in maintaining such common nuisances, shall be guilty of a violation of this Act. Any county, or district attorney, or the Board, or any agent or employee of this Board in the county where such nuisance exists, or is kept, or maintained, may maintain an action by injunction in the name of the State, or the Board to abate and to temporarily and permanently enjoin such nuisance. Such proceedings shall be guided by the rules of other injunction proceedings, except that the plaintiff shall not be required to give bond in such action and upon final judgment against the defendant the Court shall order that said room, house, building, structure, boat, or place of any kind shall be closed for a period of one year, or closed for a part of said time and until the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the Court making the order, in the penal sum of not less than One Thousand Dollars (\$1,000) payable to the State, and conditioned that liquor will not

thereafter be manufactured, possessed, sold, bartered, or given away, or furnished, or otherwise disposed of therein, or kept thereon, or therein, with the intent to sell, barter, or give away, or otherwise dispose of same contrary to law, and that he will pay all fines, costs and damages assessed against him for any violation of this Act. If any conditions of such bond be violated the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

Sec. 30. That any liquor found in the possession of any one in this State not having affixed to the bottle, or container the stamps required by this Act, except in the case of wines if satisfactory proof be given that the same has been withdrawn from a tax-paid container, or unless it has affixed to the bottle, or container a stamp stating that the same has been withdrawn from a tax-paid container, (the Board shall promulgate regulations for the affixing of such stamps) is hereby declared to be contraband and the same may be seized by the Board, or any one of its agents or employees, or by any peace officer, without warrant, and the Sheriff of the county in which such seizure is made shall take possession of said liquor so seized for sale at public auction to the highest bidder after due advertisement for a period of ten (10) days, but no sale shall be made to any person other than the holder of a wholesaler's or package store permit, and the Sheriff, before the delivery of any liquor so seized to any purchaser, shall require the purchaser to affix the proper amount of stamps to the individual containers as herein provided. Any other confiscation of liquor authorized by the provisions of this Act shall be handled in a like manner. The costs of confiscation and sale shall be paid out of the proceeds derived from such sale. After the costs of such sale have been paid any balance remaining shall be remitted to the Board. It is further provided, that any liquor transported in violation of any provision of this Act shall be subject to confiscation and the same shall be sold in the manner herein provided. It is further provided, that no liquor of questionable purity and content shall be sold at public auction, but the same shall be destroyed by any officer so seizing the same upon an

order of the District Court of the county where the same was seized if such Court be of the opinion that such liquor should, for such reason, be destroyed. It is further provided, that no liquor sold at public auction as herein provided shall be delivered within a period of five (5) days after such sale, during which time the Board may, in its discretion, reject any bids and order the liquor resold until a satisfactory bid is had.

Sec. 31. It shall be the duty of all peace officers of this State, including city, county and State, to enforce all provisions of this Act and to assist the Board in detecting violations of this Act and apprehending offenders and of County Courts, in case of violation to make recommendations to the Board for revocation of permits. Whenever any officer shall arrest any person for violation of this Act, he shall take into his possession all liquor which the person so arrested has in his possession, or on his premises, which is apparently being used in violation of this Act. In the event the person so arrested is convicted finally, and if it is found that the said liquor has been used in violation of this Act the same shall be forfeited to the Board and shall be delivered by the Court, or officer to him to be disposed of as herein provided.

Sec. 32. The Commissioners Court of each county in the State, shall order an election to be held by the qualified voters in said county, or of any justice precinct, incorporated city, or town, to determine whether or not the sale of liquors shall be prohibited or legalized in such county, justice precinct, incorporated town, or city, whenever petitioned to do so by as many as ten (10) per cent of the qualified voters of said county, or of said political subdivision, taking the votes for Governor at the last preceding general election as the basis for determining the qualified voters in any such county, or political subdivision. After the first local option election held as provided in this Act, in any county, justice precinct, incorporated town, or city, no subsequent election in the same political subdivision shall be held for the purpose of determining whether or not liquor as defined in this Act shall be legalized or prohibited earlier than one year from the date of the preceding local option

election in said county, or said political subdivision of said county.

Sec. 33. When the Commissioners Court shall order an election as herein provided for, it shall be the duty of said Court to order such election to be held at the voting places within such subdivision or county upon a day not less than ten (10) nor more than twenty (20) days from the date of said order, and the order thus made shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity or to clothe the Court with jurisdiction to make it valid, have been duly complied with, provided that said Court shall appoint such officers to hold such elections as now required to hold general elections.

Sec. 34. The Clerk of said Court shall post or cause to be posted at least one copy of said order in each election precinct in such political subdivision or county affected, for at least six (6) days prior to the day of election which election shall be held and the return thereof made in conformity with the provisions of the General Laws of the State, and by the election officers appointed and qualified under such laws.

Sec. 35. (a) At said election the vote shall be by official ballot which shall have printed or written at the top thereof in plain letters the words "Official Ballot." Said ballot shall have also written or printed thereon the words "For the sale of liquor," and the words, "Against the sale of liquor," or words appropriate to the election ordered, and the Clerk of the County Court shall furnish the presiding officer of each such voting box within such subdivision or county with a number of such ballots, to be not less than twice the number of qualified voters at such voting boxes and the presiding officer of each voting box shall write his name on the back of each ballot before delivering the same to the voter and each person offering to vote at each election shall, at the time he offers to vote, be furnished by such presiding officer with one such ballot; and no voter shall be permitted to depart with such ballot and shall not be assisted in voting by any person except such presiding officer or by some officer assisting in the holding of such election, under the direction of such pre-

siding officer when requested to do so by such voter.

(b) Those who favor the sale of liquor shall erase the words "Against the sale of liquor," by making a pencil mark through the same, and those who oppose it shall erase the words "For the sale of liquor," by making a pencil mark through same. No ballot shall be received or counted by the officers of such election that is not an official ballot, and that has not the name of the presiding officer of such election written thereon in the handwriting of such presiding officer as provided by this Act.

Sec. 36. The officers holding such election shall, in all respects not herein specified conform to the General Election Laws in force regulating elections and after the polls are closed proceed to count the votes and within three (3) days thereafter make due report of said election to the aforesaid Court. The provisions of the General Election Laws shall be followed in calling and conducting said election where not inconsistent herewith.

Sec. 37. Said Court shall hold a Special Session on the fifth day after holding of said election, or as soon thereafter as practicable, for the purpose of canvassing the votes and certifying the results, and if a majority of the voters are "Against the sale of liquor" said Court shall immediately make an order declaring the results of said vote, and absolutely prohibiting the sale of liquor within the said political subdivision after thirty (30) days from the date of declaring the results thereof, and thereafter until such time as the qualified voters therein may thereafter at the legal election held for such purpose by a majority vote decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of laws have been complied with in giving notice of and holding said election and counting and returning the votes, and declaring the results thereof.

Sec. 38. The order of said Court declaring the result and prohibiting the sale of liquor shall be published by the posting of said order at three (3) public places within the county or the political subdivision in which the election was held, which fact shall be entered by the County Judge on the minutes of the Commissioners Court. An entry thus made or a copy

thereof certified under the hand and seal of the Clerk of the Court shall be prima facie evidence of such posting.

Sec. 39. If a majority voting at such election vote "For the sale of liquor," the Court shall make an order declaring the results and have the same entered of record in the office of the Clerk of said Court, whereupon it shall be lawful in such political subdivision to manufacture, sell and distribute liquor in accordance with the terms of this Act until such time as the qualified voters therein may thereafter, at a legal election held for that purpose by a majority vote, decide otherwise, and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes and declaring the results thereof. It shall be the duty of the County Clerk, within three (3) days after the results of any such election have been declared to certify such results to the Secretary of State at Austin.

Sec. 40. The Commissioners Court shall upon petition as herein provided order local option elections for the purpose of determining whether liquor of the various types and alcoholic contents herein provided shall be legalized or prohibited.

In any area where a petition requests the Commissioners Court to do so, one or more of the following issues may be submitted:

(a) "For legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of four (4) per cent by weight" and "Against legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of four (4) per cent by weight."

(b) "For legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of fourteen (14) per cent by volume," and "Against legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of fourteen (14) per cent by volume."

(c) "For legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of twenty-four (24) per cent by volume" and "Against legalizing the sale of vinous and malt liquors that do not contain

alcohol in excess of twenty-four (24) per cent by volume."

(d) "For legalizing the sale of all liquors" and "Against legalizing the sale of all liquors."

(e) "For prohibiting the sale of all liquors," and "Against prohibiting the sale of all liquors."

Sec. 41. Any person, firm, or corporation who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500) or by imprisonment in the County Jail for not more than six (6) months, or by both such fine and imprisonment; and for the second or subsequent violation such person, firm, or corporation, upon conviction, shall be punished by a fine of not less than Two Hundred Dollars (\$200) and not more than One Thousand Dollars (\$1,000) or by imprisonment in the County Jail for not more than one (1) year, or by both such fine and imprisonment; and in the case of a corporation such violation shall be construed to be the acts of the person committing the overt act and also the acts of the President and Secretary of said corporation, and in case of the unlawful acts as herein set out by said corporation, or any of its agents, such acts shall be deemed to be the acts of said President and Secretary and proof of violations by said corporation shall be sufficient proof as against said officials.

The possession of a license to sell spirituous, vinous and malt liquors issued by the Government of the United States shall be prima facie evidence that such person, when found in the possession of such license, is engaged in the business of selling such liquors.

Sec. 42. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of the laws of this State, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than One

Thousand Dollars (\$1,000), or be imprisoned in the County Jail for not more than one year, or both. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure, or place is occupied or used for the manufacture or sale of liquor contrary to the provisions of the laws of this State, and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure, or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation and any such lien may be enforced by action in any Court having jurisdiction.

All intoxicating liquors transported in this State upon which any lawful tax to the State has not been paid, for the purpose of this Section shall be deemed to be kept in violation of the laws of this State.

Sec. 43. If a person shall have in his possession within this State any distilled liquors not contained in a container to which is affixed a stamp or other valid evidence showing the payment of the tax on such whiskey due to the State of Texas, he shall be guilty of a misdemeanor and upon conviction shall be fined not less than Ten Dollars (\$10.00), nor more than Five Hundred Dollars (\$500), or be confined in the County Jail not more than six months or both.

Sec. 44. When any Sheriff or Deputy Sheriff or Constable or Deputy Constable, or any Police Officer, any other State or local Officer charged with the duty of enforcing the criminal laws of this State shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air craft, water craft, or any other conveyance and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested and against any other person, firm and/or corporation directing and/or knowingly permitting such use of

such vehicle under the provisions of law in any Court having competent jurisdiction; but said vehicle or conveyance shall be returned to the good and valid bond, with sufficient sureties in sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide judgment of the Court. The Court upon the conviction of the person arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order the sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens, according to priorities, which are established, and by intervention or otherwise at said hearing or in other proceedings brought for said purpose, as being bona fide and as having been created without the lien or having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor and shall pay the balance of the proceeds into the Treasury of the State to the credit of the General Revenue Fund. All liens against property sold under this Section shall be transferred from the property to the proceeds of its sale. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the City or County where taken, or if there be no newspaper published in such City or County, any newspaper having circulation in the County, once a week for two weeks and by hand bills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the publication of the advertisement the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the State for the benefit of the General Revenue Fund.

All intoxicating liquors transported in this State upon which any lawful tax due to the State has not been paid, for the purposes of this Section shall be deemed to be transport-

ed contrary to law. Provided, however, the arresting officer shall not be entitled to assess, collect, or receive a fee for making the arrest unless the defendant is convicted in a contested trial.

Sec. 45. Upon the request of the Texas Liquor Board, the Board of Control shall prescribe, have prepared and furnish, stamps of such denominations and quantities as may be necessary for the payment of the tax imposed and assessed by this Act.

Sec. 46. Receipts from the sale of stamps, and receipts derived from the sale of permits provided for under this Act shall be deposited in the State Treasury as follows (unless otherwise specifically provided in this Act): One-fourth ($\frac{1}{4}$) to the credit of the Available School Fund, and three-fourths ($\frac{3}{4}$) to the credit of the Old Age Assistance Fund.

Sec. 47. For the purpose of enabling the Board to immediately begin the performance of its duties, there is hereby appropriated out of any money in the General Revenue Fund of the State, not otherwise appropriated, the sum of Twenty-Five Thousand Dollars (\$25,000), and said sum shall be immediately available. It is hereby declared to be the legislative intent that no further appropriation shall be made to the Board but that the expenses of operation shall be paid out of the funds collected from fees and taxes imposed by this Act. The Board shall pay back to the General Revenue Fund all the money herein appropriated, out of the first available revenue realized by the provision of this Act. When the moneys herein appropriated have been returned to the General Revenue Fund, the Board is hereby authorized to set up a revolving fund in the sum of Fifty Thousand Dollars (\$50,000) to be taken out of revenues derived under the provisions of this Act. Said sum shall be used by said Board for the payment of salaries and other expenses necessary in performing its duties, and the same is hereby appropriated.

Sec. 48. The Board is hereby authorized to cause to be printed immediately ten thousand (10,000) copies of this Act in pamphlet form for distribution, and as many additional copies as may be required. It shall cause the same to be distri-

buted to all District and County Attorneys in this State, to the several District Judges of the State, to the County Judge of the various counties, and to such other officers and persons in this State as it may deem necessary. The expense of printing such copies shall be paid out of the fees and taxes herein levied and assessed.

Sec. 49. Chapter 7 of Title 11, Penal Code of Texas of 1925, and all amendments thereto are hereby expressly repealed. Title 80, Revised Civil Statutes, 1925, and all amendments thereto are hereby expressly repealed.

Sec. 50. Chapter 116, Acts of the Regular Session, Forty-third Legislature, and Acts Amendatory thereto are hereby repealed.

Sec. 51. (Manufacture, sale and distribution of beer authorized; local option; "beer" defined)

(a) The manufacture, sale and distribution of beer containing one-half ($\frac{1}{2}$) of one per cent (1%) or more of alcohol by volume and no more than four per centum (4%) of alcohol by weight is hereby authorized within the State of Texas, subject to the terms and conditions herein imposed.

(b) It shall continue to be unlawful to manufacture, sell, barter or exchange in any county, Justice's precinct or incorporated city or town any malt liquor containing in excess of one-half ($\frac{1}{2}$) of one per cent (1%) alcohol by volume except in counties, Justice's Precincts or incorporated cities or towns wherein the voters thereof had not adopted prohibition by local option elections held under the laws of the State of Texas and in force at the time of taking effect of Section 20, Article 16 of the Constitution of Texas in 1919; except that in counties, Justice's Precincts or incorporated cities or towns wherein a majority of the voters have voted to legalize the sale of beer in accordance with the local option provisions of Chapter 116, Acts of the Regular Session of the Forty-third Legislature, beer may continue to be sold lawfully. It is expressly provided, however, that local option elections may be held in any county, Justice's Precinct or incorporated city or town within this State in accordance with the provisions of Sections — to — inclusive, of the Texas Liquor Con-

trol Act, for the purpose of determining from time to time whether the sale of beer shall be prohibited or legalized within the prescribed limits; and it shall be unlawful to sell beer in any county, Justice's Precinct or incorporated city or town wherein the same shall be prohibited by local option election, and lawful to sell beer under the provisions hereof in any county, Justice's Precinct, or incorporated city or town wherein the sale of beer shall be legalized by local option election.

(c) The word "beer" as herein-after used in this Act and for the purposes of this Act to govern the manufacture, sale and distribution of beer, shall mean any malt beverage containing one-half ($\frac{1}{2}$) of one per cent (1%) or more of alcohol by volume and not more than four per centum (4%) of alcohol by weight.

(Containers)

Sec. 52. (a) Beer can be manufactured, sold and distributed in barrels, kegs, bottles and other containers.

(b) As a standard of measure, the word "barrel" shall mean a container containing thirty-one (31) standard gallons.

(Definitions; general distributor's license)

Sec. 53. (a) A "manufacturer" is hereby defined to be any person licensed to manufacture or brew beer and to distribute and to sell same to others in the original package or container.

(b) A "general distributor" is hereby defined to be any person licensed to distribute or to sell beer to local distributors, retail dealers and/or others in the original package or container.

(c) A "local distributor" is hereby defined to be any person licensed to sell and distribute beer to retail dealers and ultimate customers in the county of his residence in unbroken packages not to be consumed on the premises where sold.

(d) A "retail dealer" is hereby defined to be any person licensed to sell beer in bottles and from kegs, barrels or other containers to the ultimate consumer.

(e) "A general distributor" shall procure the primary license in the county of his domicile or residence, and if he desires to establish any place of business in any other

county, he shall present his license secured from the county of his residence to the Assessor and Collector of Taxes of such County, together with a license fee of Fifty Dollars (\$50.00) and it shall be the duty forthwith of such Assessor and Collector of Taxes to issue a license for such general distributor in such county.

(f) A distributor, local or general, may maintain necessary warehouses, for storage purposes only, from which delivery may be made without such warehouses being licensed.

(g) "Person" shall include any corporation, partnership, association and person or group of persons.
(License)

Sec. 54. It shall be unlawful for any person to manufacture or brew for the purpose of sale or to sell or distribute any beer without first having applied for and secured a license as required by this Act.

(License fees and regulations)

Sec. 55. Before any license required by this Act shall be issued, the license fee required therefor shall be paid to the Assessor and Collector of Taxes of the County where such license is issued for the use and benefit of the General Fund of the State of Texas. Annual fees required for license authorized by this Act shall be as follows:

- | | |
|---|----------|
| (a) For a license authorizing the manufacture and sale by a manufacturer | \$500.00 |
| (b) For a general distributor | 200.00 |
| (c) For a local distributor | 50.00 |
| (d) For a license authorizing the sale of beer by retail dealer for consumption on or off the premises where sold | 25.00 |
| (e) For a license authorizing the sale of beer by retail dealer in the original container direct to the consumer, but not for resale, and not to be consumed on the premises where sold | 10.00 |
| (f) All licenses issued under the terms of this Act shall terminate at midnight on the thirty-first day of | |

December of each year and no license shall be issued for a longer term than one year. On or before the first day of January, 1936, and annually thereafter each and every person owning a license issued under the terms of Chapter 116, Acts of the Forty-third Legislature, Regular Session, or any amendment thereto may by written application file with the Assessor and Collector of Taxes of the County of his residence, not more than thirty (30) days prior to the first day of January, renew such license so held by him. Such application shall be in writing, signed by the applicant and contain full and complete information as to the business to be conducted and all other information as set out and required in the original application upon which such original license was issued, accompanied by a fee of Two Dollars (\$2.00), which said sum of Two Dollars (\$2.00) shall be in addition to the amounts in this Act required to be paid for annual licenses, as a renewal fee charge. Such sums so paid as renewal fee charges shall be deposited in the County Treasury by the respective Assessors and Collectors of Taxes as fees of office and be so accounted for by them respectively. Upon the presentation of such application for renewal of license, together with the sums required by this Act for an annual license, plus the said renewal fee of Two Dollars (\$2.00), it shall be the duty of the Assessor and Collector of Taxes to forthwith issue such renewal license upon the form to be prescribed by the; provided, however, that no applicant for a license under the terms of this Act governing the manufacture, sale and distribution of beer, shall be required to pay at any one time more than the annual fees required for licenses hereunder, and the renewal fee of Two Dollars (\$2.00) herein provided; but such applicant shall always be required to pay such fees in advance and if such license so sought is for a portion of a year only, then the fee required to be paid for the issuance of such license shall cover the period of time from the date of such license to midnight of the thirty-first day of December following, and only such proportionate part of such annual license fee as required under the terms of this Act as the period of time be-

tween the date of such license and the thirty-first day of December following bears to the calendar year shall be required to be paid by such applicant.

(g) No manufacturer, general distributor, local distributor or retail dealer shall carry on such business at more than one place under the same license, but a separate license must be obtained for each place of business, nor shall any such license be voluntarily assigned more than once, but before assignee of such license can engage in business thereunder he or they shall comply with the provisions of this Act as required by original licensee and provided further that the sale of such license, whether in the name of the original licensee or assignee, may be made under execution or mortgage and the purchaser of such license in such sale shall have the right to surrender such license to the State or County which issued the tax receipt which is the basis thereof and shall receive therefor the pro rata unearned portion of such license provided that should said original licensee or his assignee desire to change the place designated in said license he may do so by applying to the County Judge as in the case of the original application for license as provided in this Act.

(h) The Commissioners Court of each County in this State shall have the power to levy and collect from every person that may be licensed hereunder, in said County a license fee equal to one-half ($\frac{1}{2}$) of the State fee; and the city or town wherein the license is domiciled shall have the power to levy and collect a license fee not to exceed one-half ($\frac{1}{2}$) of the State fee, but no other fee or tax shall be levied by either. But nothing herein contained shall be construed as preventing the levying, assessing, and collecting general ad valorem taxes on the property of the said persons, individuals, partnership, or corporations so licensed.

(i) There is hereby provided a "Temporary License" authorizing the sale by a retail dealer of beer for consumption on or off the premises where sold. The fee for such "Temporary License" shall be Five Dollars (\$5.00). Such licenses shall be issued by the Assessor and Collector of Taxes upon application approved by the County Judge, but no such permit shall be is-

sued to any person who does not also hold a license as provided in subsection (d) of this Section, and no such permit shall authorize the sale of beer at any point outside the county where same is issued. Any such temporary license shall expire at the end of the fourth day after the date the same is issued. Fees collected upon the issuance of such temporary licenses shall be retained by the County and no other fees shall be charged for such licenses; and no refund shall be allowed upon the surrender or non-use of any such license. The County Judge shall issue such licenses only for the sale of beer at picnics, celebrations, or similar events, and may refuse to issue such license if in his judgment the issuance of the license would in any manner be detrimental to the public.

(j) Every license issued prior to the effective date hereof to any manufacturer, general distributor, local distributor or retail dealer, shall remain in force until midnight of December, 1935, unless surrendered in the manner herein provided; provided, however, that the power and authority heretofore granted to the State Comptroller for the enforcement of Chapter 116, and the duties imposed upon him are hereby transferred to and imposed upon the Texas liquor Control Board; and provided that the schedule of license fees provided in subsections (d) and (e) of this Section shall not be effective until January 1, 1936.

(Beer tax; stamps)

Sec. 56. (a) There is hereby levied and assessed a tax at the rate of One Dollar and Twenty-five cents (\$1.25) per barrel on all beer sold, stored or distributed in this State or imported into this State. On imported beer the duty of paying said tax and affixing and cancelling the tax stamp as required under this Act shall rest primarily on the importer, and it is hereby declared to be unlawful to import beer into this State unless said tax has first been paid and the tax stamp evidencing such payment has been first affixed and cancelled as required by this Act.

It is the intention of this Section to impose upon all person importing beer into this State the duty of paying said tax and affixing said stamp as required by this Act before said beer is imported into the State. Provided, however, if it should be determined that this sub-section imposes an undue burden on interstate commerce and for

that reason is invalid, then, it is hereby declared to be the legislative intent, nevertheless, to levy and collect the tax at the rate herein prescribed upon all beer sold, stored or distributed in this State, or imported into this State, and the duty of paying this tax shall rest upon the first person receiving, selling, storing or distributing said beer in this State; provided, further, however, that the tax herein prescribed shall be paid but one time.

No manufacturer, however, shall be required to affix any stamps on any container of beer to be transported out of this State while same is stored in any brewery where same is brewed.

It shall be unlawful to transport to destinations in this State any beer upon which said tax has not been paid.

(b) Said tax shall be paid and evidenced by placing stamps as hereinafter provided in the denomination required on each original barrel, keg, box, carton or other container in which beer in bulk or in bottles is packed; provided, however, that such container shall not contain more than the content of one (1) barrel of beer; and provided further that at the time such stamp is affixed, the person affixing the same shall by indelible ink or stamp cancel said revenue stamp by placing the date of his or its full name or initials on said revenue stamp.

(c) Provided further that if at the time said beer is received in this State, said stamps, as required by this Act, have already been affixed and/or dated and initialed, the person receiving the same shall be relieved therefrom, but he shall not be relieved from dating or initialing the same if no initial or date appears on said stamp upon receipt of said beer.

(d) Said stamp shall be placed on each barrel, keg, carton, box or other container upon which the stamp is required to be affixed in such way that such container cannot be conveniently and practically opened without mutilating or defacing said stamp. Every person opening any such container upon which a stamp has been placed shall at the time mutilate or otherwise deface such stamp so that the same cannot be used again.

(e) No bottled beer shall be stored in this State unless the same be in a container, unless the same is exposed for sale or is being cooled for sale, except when the same is legally in the possession of the ultimate con-

sumer; nor shall any beer be stored or sold in this State except to the ultimate consumer, unless the same is packaged or contained in a container properly stamped.

(f) If any person has paid the tax on any containers of beer and affixed stamps thereon, and thereafter said beer is shipped out of Texas for consumption, a claim for refund may be made on paying a fee of Five Dollars (\$5.00) to the Texas Liquor Control Board at the time and in the manner prescribed by such Board. So much of any funds derived hereunder as may be necessary not to exceed two per centum (2%) thereof is hereby appropriated for such purpose. The Board may promulgate rules and regulations generally for the enforcement of this Act.

(Tax to be paid and stamps affixed at source)

Sec. 57. It is the purpose and intent of this Act to require the tax to be paid and the stamp evidencing the same to be affixed on the first sale, distribution, storage or transportation and at the source, to the end that it will preclude any person evading the payment of this tax, and so as to relieve as nearly as possible the consumer and retail dealer from having to affix said stamps.

(Printing or engraving stamps; appropriation)

Sec. 58. (a) It shall be the duty of the State Treasurer to have engraved or printed the stamps necessary to comply with this Act and to sell same to all persons upon demand and payment therefor, and one-fourth ($\frac{1}{4}$) of the proceeds of such sale shall be placed to the credit of the State Available School Fund and three-fourths ($\frac{3}{4}$) to the Old Age Assistance Fund, and the State Treasurer shall be responsible for the custody and sale of such stamps and for the proceeds of such sales under his official bond. Such stamps shall be of such design and denomination as the State Treasurer shall from time to time prescribe and shall show the amount of tax, the payment of which is evidenced thereby, and shall contain the words "Texas State Tax Paid."

(b) The sum of Five Thousand Dollars (\$5,000) or so much thereof as may be necessary, is hereby appropriated out of the General Fund with which to pay the costs of providing such stamps. All appropriations of moneys authorized by the Forty-

Fourth Legislature, Regular Session, 1935, for enforcement of the provisions of Chapter 116, Acts Regular Session, Forty-Third Legislature, by the Comptroller of Public Accounts, are hereby transferred and made available for expenditure by the Texas Liquor Control Board in the enforcement of this Chapter as amended.

Sec. 59. (1) It shall be unlawful for any manufacturer or distributor directly or indirectly or through a subsidiary or affiliate, any agent or any employee, or by any officer, director, or firm member:

(a) Ownership of Interest or Real Estate: To own any interest in the business of any retail dealer in beer, or own any interest of any kind in the premises in which any such retail dealer conducts his or its business.

(b) Retail Licenses: To hold (after the expiration of any existing licenses) the ownership or any interest in any license to sell bewery products for consumption on the premises covered by such license, except the license of manufacturers to dispenss their own products on the brewery premises.

(c) Loans and Guarantees: To furnish, give or lend any money or other thing of value, or to extend unusual credit terms, to any person engaged in selling brewery products for consumption on the premises where sold, or to any person for the use, benefit or relief of said person engaged in selling as above or to guarantee the repayment of any loan or the fulfillment of any financial obligation of any person engaged in selling as above. The extension of credit for longer period of time than is generally extended to regular customers of a manufacturer or distributor covering the purchase of brewery products from such manufacturer or distributor shall be deemed unusual credit terms.

(d) Consignment Sales: To make or enter into any agreement or contract, the effect of which will amount to the shipment or delivery of brewery products on consignment. "Consignments", as here used, means the delivery of products under an arrangement whereby the person receiving such products has the right at any time prior to sale to relinquish possession to or return them to the shipper, and whereby the title to such products remains in the shipper.

(e) Equipment and Fixtures: To furnish, give, rent, lend or sell any

equipment, fixtures or supplies to any person engaged in selling brewery products for consumption on the premises where sold. This sub-section does not apply to such equipment, fixtures or supplies furnished, given, loaned, rented or sold prior to the effective date of this Act, except that such transactions made prior to this date are not to be used as a consideration for an agreement thereafter made respecting the purchase of brewery products: provided, that equipment, fixtures or supplies furnished, given, rented, loaned or sold to any person engaged in selling brewery products for consumption on the premises where sold, prior to the effective date of this Act, when removed from the premises of such person or repossessed by any manufacturer or distributor of brewery products, or by his agents or employees, shall not again be furnished, given, rented, loaned or sold to any person engaged in the sale of brewery products for consumption on the premises where sold.

This sub-section shall not apply to the practice of furnishing carbonic acid gas or tapping accessories, such as rods, vents, hose, washers, couplings, taps, vent tongues, and check valves to persons engaged in selling brewery products for consumption on the premises where sold when a charge is made for such carbonic acid gas in accordance with the reasonable open market value thereof in the locality where furnished, and if the aggregate cost to any one person of all tapping accessories herein enumerated furnished to him by such manufacturer or distributor in any twelve months' period does not exceed five dollars for each tapping unit used in dispensing brewery products purchased from such manufacturer or distributor.

(f) Signs: (1) to furnish, give, lend, rent or sell any interior decorations or signs costing the manufacturer or distributor collectively more than Twenty-five Dollars (\$25.00) in any one calendar year, or to furnish, give, lend, rent or sell any sign or signs for outside use, costing the manufacturer or distributor collectively more than Fifty Dollars (\$50.00) in any one calendar year, to any person engaged in selling brewery products, for use in or

about or in connection with any one establishment in which brewery products are sold for consumption on the premises where sold; (2) To pay money or other thing of value for the privilege of placing or painting a sign on the premises occupied by anyone selling brewery products for consumption on the premises where sold. This sub-section shall not apply to valid existing contracts for the loan or rental of signs or space for the painting or erection of signs, made prior to the effective date of this Act, but shall apply to prevent the renewal or continuance of any such contract at or after its termination; provided, that any such signs when removed from the premises of such person or repossessed by any manufacturer or distributor of brewery products, or by any of his agents or employees, shall not again be furnished, given, loaned, rented or sold to any person engaged in the sale of brewery products for consumption on the premises where sold.

(g) Allowances and Rebates for Advertising and Distribution Service: to pay or make any allowance to any buyer for a special advertising or distribution service (1) Unless in pursuance of a written contract defining the service to be rendered and the payment therefor; and (2) unless such service is rendered and the payment is reasonable and not excessive in amount; and (3) unless such contract is separate and distinct from any sales contract; and (4) unless such payment is equally available for the same service to all competitive buyers in the same class in the same trade area.

(h) Prizes and Premiums: to offer any prize, premium, gift, or other similar inducement, except advertising novelties of nominal value, to any dealer in or consumer of brewery products.

(i) Advertising: To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of any brewery product, if such advertisement cause, or is reasonably calculated to cause deception of the consumer with respect

to the product advertised. An advertisement shall be deemed misleading if it is untrue in any particular or if directly or by ambiguity, omission, or inference, it tends to create a misleading impression. Any advertisement of alcoholic content of any brewery product or any advertisement disparaging of a competitor's products, or that is obscene or indecent, shall be unlawful.

(j) Misbranding: To sell or otherwise introduce into commerce any brewery product that is misbranded. A product is misbranded:

(1) Food and Drug Act Requirements—If it is misbranded within the meaning of the Food and Drug Acts.

(2) Standards of Fill—If the container is so made, formed or filled as to mislead the purchaser, or if its contents fall below the recognized standard of fill.

(3) Standards of Quality—If it misrepresents the standard of quality of product in the branded container.

(4) Labels—If it is so labeled that it purports to be any product other than is actually in the container.

(k) Exclusive Outlet: To require, by agreement or otherwise, that any retailer engaged in the sale of brewery products shall purchase any such products from such person to the exclusion, in whole or in part, of the products sold or offered for sale by any other person engaged in the manufacture or distribution of brewery products, or to require the retailer to take and dispose of a certain quota of any such products.

(l) Commercial Bribery: To give or permit to be given money or anything of value in an effort to induce agents, employees, or representatives of customers or prospective customers to influence their employers or principals to purchase or contract to purchase brewery products from the maker of such gift, or to influence such employers or principals to refrain from dealing or contracting with competitors.

(m) Returnable Container: It shall be unlawful for any manufacturer to accept as a return or to purchase or use a hogshead, barrel, half-barrel, keg, case or bottle permanently branded or imprinted with the name of another manufacturer.

(n) Labeling: To manufacture or sell or otherwise introduce into commerce in this State any brewery product unless it bears a label showing in plain, legible type the name and address of the manufacturer, or the name of the distributor for whom any special brand is manufactured, the brand or trade name, and the net content of the bottle in terms of United States liquid measure; or to manufacture or sell or otherwise introduce into commerce in this State any beer or container or dispensing equipment, carton or case for beer bearing a label or imprint which by wording, lettering, numbering or illustration, or in any other manner carries any reference or illusion, or suggestion to the alcoholic strength of the product or to any manufacturing process, ageing, analysis or scientific matter or fact, or upon which appears any such words or combination of words, or abbreviations thereof, as "strong", "full strength", "extra strength", "high test", "high proof", "pre-war strength", "full old time alcoholic strength", or any words or figures or other marks or characters alluding or relating to "proof", "balling" or "extract" contents of the product, or which bears a label that is untrue in any particular or which directly or by ambiguity, omission or inference tends to create a misleading impression or causes, or is reasonably calculated to cause, deception of the consumer or buyer with respect to the product.

(2) It shall be unlawful for any retail dealer to dispense any draft beer unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the name or the brand of the particular product being at the time dispensed through each faucet or other apparatus, which sign shall be in legible lettering and in full sight of the purchaser.

(3) Provided, that if any provisions of this Section 9 is for any reason held unconstitutional and invalid, such decision shall not affect the validity of the remaining portions, and the Legislature hereby declares that it would have passed this Act and each section, sub-section, provision, sentence, clause or phrase thereof, irrespective of the fact that any pro-

vision is declared unconstitutional. (Procedure to obtain license)

Sec. 60. (a) Any person desiring a license as manufacturer, distributor or retail dealer may in vacation or in term time file a petition with the County Judge of the county in which the applicant desires to engage in such business, which petition shall state as follows:

If a manufacturer:

(1) That he is a law abiding, tax-paying citizen of this State, over twenty-one years (21) of age; that he has not been convicted of a felony within two (2) years immediately preceding the filing of said petition, and has been a resident of the county wherein such license is sought for more than two (2) years next preceding the filing of said petition.

(2) If a co-partnership, that all of the individuals have the same qualifications as provided in paragraph (1) above.

(3) If a corporation, that applicant is organized and chartered under and has complied with all corporation laws of this State applicable to such corporation; the principal place of business in such county where such license is sought, and the President or Manager shall make an affidavit that he is a law abiding, taxpaying citizen of this State, over twenty-one (21) years of age, and that he has not been convicted of a felony within two (2) years immediately preceding the filing of said petition.

If a distributor:

(1) Such applicant shall give the same information required of a manufacturer, including the place or places where such business is to be transacted.

If a retail dealer:

(1) The same information required of a manufacturer.

(2) Whether he desires to sell beer for consumption on or off the premises.

If an individual:

(1) That the applicant shall make an affidavit duly signed and sworn to before any person authorized to administer oaths under the laws of this State, showing that he has not since the effective date of this Act, naming the date in the affidavit, and within two (2) years next preceding the making of said applica-

tion and while engaged in the manufacture, sale or distribution of beer, paid, contributed or furnished any money or thing of value to any candidate for any public office in this State.

If the application is in behalf of a corporation, the affidavit shall be by the president, vice-president, secretary or treasurer of such corporation and shall contain a statement that the corporation has not paid, contributed or furnished any money or thing of value to any candidate for any public office in this State since the effective date of this Act, naming the date in the affidavit, and within two (2) years next preceding the making of said application and while engaged in the business of manufacturing, sale or distribution of beer. Any person who makes a false affidavit in reference to the matters and things required by this Section, shall be guilty of a felony, and upon conviction shall be punished as now provided by law for having committed the offense of false swearing.

(b) Such manufacturer, distributor, or retail dealer desiring to be licensed shall file said petition with the County Judge who shall set same for a hearing at a date not less than five (5) nor more than ten (10) days from the filing of same, and if upon hearing, he finds the facts stated in such petition are true, he shall authorize a license to be granted as prayed for, provided, however, that upon the filing of such petition, the clerk shall first give notice thereof by posting at the courthouse door a written notice of the filing of said petition and a copy of the substance thereof, and such notice shall state when the petition shall be heard. Said petition may be inspected by any person. Any citizen shall be permitted to contest the facts stated in said petition and the applicant's right to secure license upon giving security for all costs which may be incurred in such suit, should the same be decided in favor of the applicant; provided, however, no county or district attorney shall be required to give bond for such costs, but the county or State as the case may be shall be liable therefor.

(c) Upon the court's authorizing a license to be issued, the Judge shall so certify and deliver a copy of such certification to the applicant, who

shall thereupon present the same to the Assessor and Collector of Taxes and pay the fee required, whereupon it shall be the duty of the Assessor and Collector of Taxes to issue such a license on a form prescribed by the Texas Liquor Control Board showing the amount paid, date, classification and such other information that may be required by the said Board, including the correct address of the place of business. A copy of such license shall be sent by the Assessor and Collector of Taxes forthwith to the office of the Texas Liquor Control Board and a record thereof kept in said office.

(d) In the event the County Judge denies the application for a license, he shall enter his judgment accordingly and the applicant may within thirty (30) days thereafter appeal to the District Court of the County where said application is made, and such District Court may hear and determine such appeal in term time or vacation by trial de novo. If the applicant shall prevail by final judgment, a certified copy thereof shall be presented to the Assessor and Collector of Taxes, who shall thereupon accept the fees required and license shall be issued as provided herein.

(e) Any manufacturer, distributor or person shipping or consigning beer into this State shall file with the Secretary of State a certificate certifying the name of his agent upon whom service may be had, his or its street address and business, and if such shall not have been done within fifteen (15) days from the effective date hereof then service may be had on the Secretary of State in any cause of action arising out of the violation of this Act governing the manufacture, distribution and sale of beer, and it shall be the duty of the Secretary of State to send any such citation served on him to such person who may be in a foreign state, registered, return receipt requested and such receipt will be prima facie evidence of service on such person.

(Form of license; disposition of unearned portion of license; statements by Assessor and Collector of Taxes)

Sec. 61. (a) Upon the payment of the fee to the Assessor and Collector of Taxes and the proper evidence from the County Judge that such

applicant should be licensed, such Assessor and Collector shall issue to the applicant the proper license which shall be by him signed, be under the seal of his office, be dated, state on its face for what it is issued, date when it will expire, by whom and where such business is to be conducted and shall describe the place where same is to be kept and whether licensee is authorized to act as manufacturer, general distributor, local distributor, or retail dealer of beer as set out in the application.

(b) In the event of the death of any licensee or the dissolution of any corporation or association of persons, leaving unearned portion of any license issued, the legal representatives of such deceased person or surviving partner or director of any such corporation may present the license of such person to the State and County and receive payment of the unearned portion of license fee collected, the State's portion to be paid out of the foregoing appropriation to the Texas Liquor Control Board

(c) The Assessor and Collector of Taxes shall make statements to the Texas Liquor Control Board of the amounts collected by him at the times and in the manner as required by the Board
(Penalty)

Sec. 62. (a) If any person manufactures or sells beer in this State as a manufacturer, distributor or retail dealer without then and there being licensed as a manufacturer, distributor or retail dealer respectively, or

(b) If any person or agent or representative of any manufacturer, distributor or retail dealer shall manufacture or sell beer for any manufacturer, distributor or retail dealer without such manufacturer, distributor or retail dealer being duly licensed as required by law, or,

(c) If any persons shall sell, transport, store or otherwise handle in intrastate commerce, or conspire to sell, transport, store or otherwise handle in intrastate commerce any beer without the stamp required in Section 6 hereof being placed on the container as required in such Section, or,

(d) If any person shall open any such container having a stamp without then and there mutilating or

otherwise defacing such stamp so that it cannot be again used, or,

(e) If any person shall attach to any container of beer any stamp that has been theretofore attached to a different container of beer, or,

(f) Shall refuse to allow on demand the Texas Board of Liquor Control or any representative of said Board to make a full inspection of any place where beer is being stored, transported, manufactured or otherwise handled, or,

(g) If any person shall knowingly or willfully sell any beer to any person under the age of twenty-one (21) years, or,

(h) If any person fails to display any license required by the provisions of this Act in some conspicuous place in the house where such business is conducted, or

(i) If any person shall sell or offer for sale in this State, whether as principal or agent, any beer unless the same be in or from the original container bearing the original label with the full name of the brewer or manufacturer of such beer, or the name and address of any distributor for whom a special brand is manufactured, both upon the label or bottle and/or upon the cap or cork of such bottle or upon the keg, or

(j) If any person shall employ any person under the age of eighteen (18) years to sell, handle or dispense, or to assist in the selling, handling or dispensing of beer in any establishment where beer is sold by retail to be consumed on the premises where sold, or

(k) If any person shall violate any provision of this Act whether specifically enumerated above or not,

(l) He shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine in the sum not less than Twenty-five Dollars (\$25.00) and not more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail not more than one year or by both such fine and imprisonment except when some other penalty is specifically provided by this Act, in which event the penalty specifically provided shall apply to the specific act or omission.

(Records; penalty; other regulations)

Sec. 63. (a) Each manufacturer and distributor shall be required

to keep records of the amount of beer manufactured and/or bought or received by them and the amount sold, the amount of stamps purchased by them and the amount of stamps used by them and such other records as may be required to be kept by the Texas Liquor Control Board which records at all times shall be open for the inspection of the Board or its duly authorized representatives at reasonable office hours.

(b) If any person shall commit any offense prescribed by Section 13 or violate any other provision of this Act, he shall also forfeit to the State a penalty not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) to be recovered by the State in a suit filed in Travis County or in any county in which such violation may have occurred, which money shall be paid into the State Available School Fund, and each day of such violation shall constitute a separate and distinct violation.

(c) Each sale to any person under twenty-one (21) years of age under the provisions of this Act shall constitute a separate offense.

(d) It shall be unlawful for any person in all counties or subdivisions thereof wherein the sale of beer as defined by this Act is authorized to be sold, to sell beer on the day of any general primary election or general election held in this State, between the hours of seven o'clock A. M. and eight o'clock P. M. of the day, and

(e) It shall be unlawful for any person engaged in or having any interest in any business which manufactures, sells or distributes beer, as defined in this Act, to contribute any money or any other thing of value toward the campaign expenses of any candidate for any office in this State.

(f) No person who may engage in the sale of beer, as a principal business and which is to be consumed on the premises, under the provisions of this Act shall offer for sale or sell such beer between the hours of twelve o'clock midnight and seven o'clock A. M. on each day as herein provided and from and after twelve o'clock midnight Saturday until seven o'clock A. M. Monday of the following week.

(g) The Commissioners Court of any county in the territory thereof outside of incorporated cities and towns and the governing authorities of any city or town within the corporate limits of any such city or town may prohibit the sale of beer by any dealer whose principal business is the sale of beer where the place of business of any such dealer is within three hundred (300) feet of any church, school or other educational institution, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur. No license or permit shall ever be granted, nor shall beer ever be sold in or upon any property, State Parks excepted, owned by or under lease by the State or within three hundred (300) feet of the grounds of the State Capitol. This shall not apply to property of the State which is under lease and being used and occupied by others.

(h) The County Judge of any county after ten (10) days notice and hearing may revoke the license of any licensee of such county.

1. When disorderly or immoral practices are permitted on the premises, or spiritous, vinous or malt liquors are illegally sold on the premises.

2. Where the word "saloon" is printed, painted or placed upon the door, window or in any other public place on or about the premises, or when the word "saloon" is used in any advertisement by the licensee.

(Counterfeiting stamps)

Sec. 64. Any person, other than the State Treasurer or his duly authorized agent who shall print or engrave or directly aid in or cause the printing or engraving of any stamp or stamps evidencing or purporting to evidence the payment of any tax levied by this Act governing the manufacture, distribution and sale of beer, or who shall use or consent to the use of any counterfeit or unauthorized stamps in connection with the sale or offering for sale of any beer, or shall place or cause to be placed on any container containing or to contain such beer any such unauthorized or counterfeit stamps, or if any person shall knowingly possess any counterfeit stamps or shall counterfeit any license to be used in lieu of the stamps or license required by this Act governing the manufac-

ture, distribution and sale of beer, he shall be guilty of a felony and upon conviction be punished by imprisonment in the penitentiary for not less than two (2) years nor more than five (5) years.

(Penalties for unlawfully permitting opening or consuming beer on premises where sold)

Sec. 65. Any person, whether as principal or agent of any firm, corporation or association of persons engaged in the business of manufacturing and selling or in the business of distributing and selling or in the retail business of selling or in the retail business which does not permit such beer to be opened and consumed on the premises where sold, who shall permit any such beer so manufactured and sold or distributed and sold to be opened and consumed on the premises where sold, shall be guilty of a misdemeanor and upon conviction, be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00).

(Forfeiture of license)

Sec. 66. In addition to the penalties herein provided, the license of any person convicted of violating any of the provisions of this Act governing the manufacture, sale and distribution of beer shall be subject to forfeiture in a suit filed by the State for such purpose by reason of such conviction; and no license shall be re-issued to any person whose license for any such occupation has been revoked or forfeited within one (1) year next preceding the filing of his application for a new license.

(Effect of forfeiture of license)

Sec. 67. In case the license of any licensee hereunder is forfeited under the provisions of this Act, nevertheless such licensee shall be authorized to sell or dispose of in bulk any stock of beer he may have on hand at the time such license is forfeited.

(Transportation of beer)

Sec. 68. It is hereby declared to be lawful to transport beer, as herein defined, from any place in this State, where the sale, manufacture and distribution of said beer is authorized by law, to any other place within this State where the same may be lawfully manufactured, sold or distributed; and from the State boundary to any such place, even though in the course of such trans-

portation the route over which the same is being transported may traverse local option territory in which the manufacture, sale and distribution of said beer is prohibited. Provided, however, that any such shipments must be accompanied by a written statement furnished and signed by the shipper showing the name an address of the consignor and the consignee, the origin and destination of such shipment and it shall be the duty of the person in charge of such cargo while it is being so transported to exhibit such written statement to any peace officer making demand therefor, and said statement shall be accepted by such officer as prima facie evidence of the lawful right to transport such beer.

(Refunding fee for unexpired term)

Sec. 69. In all cases where any person pursuing the occupation of selling beer containing not more than four per centum (4%) of alcohol by weight under licenses issued in accordance with the laws of this State has been or shall hereafter be prevented from pursuing such occupation for the full time to which he would be otherwise entitled by reason of the adoption of local option in any county or sub-division thereof, the proportionate amount of license fees paid by him for the unexpired term shall be refunded to him.

(Obstructing view of interior of places of business)

Sec. 70. No "blinds" or barriers of any kind or character shall be installed or maintained in the openings or doors of any establishment whose principal business is the sale of beer; neither shall any windows on said establishments be painted in such a way as to obstruct the views from the general public.

Sec. 71. Upon having called to his attention by affidavit of any credible person that any person is violating, or is about to violate, any of the provisions of this Act governing the manufacture, distribution and sale of beer, it shall be the duty of the Attorney General or the District or county Attorney to assist in any proceedings to restrain any such person from the threatened or any further violation, and the District Judge shall have authority to issue restraining orders without hearing, and upon notice and hearing to grant injunction, to prevent such threatened or further violation by the per-

son complained against, and may require the person complaining to file a bond in such amount and containing such conditions and in such cases as the Judge may deem necessary. Upon any judgment of the Court that violation of any restraining order or injunction issued hereunder has occurred, such judgment shall operate to cancel, without further proceedings, any license held by the person who is defendant in the proceedings, and no license shall be reissued to any person whose license has been so cancelled, revoked or forfeited, within one (1) year next preceding the filing of his application for a new license. It shall be the duty of the District Clerk to notify the Assessor and Collector of Taxes and the Texas Liquor Control Board of any judgment of a Court which operated hereunder to cancel a license.

Sec. 72. If any section, paragraph, sentence, or phrase of this Act be invalid, then such invalid portion shall not in any way affect the remainder of this Act, and it is hereby declared as the Legislative intent that the remainder of this Act would have been passed by the Legislature notwithstanding the invalidity of such section, paragraph, sentence, or phrase.

Sec 73. The fact that the people of Texas have adopted a Constitutional Amendment legalizing the sale of liquor in wet areas as herein defined and the further fact that the traffic in liquor in this State is unregulated at this time, create an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be suspended, and such Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

SMALL,
WOODRUFF.

Read and Pending.

Senator Martin sent up the following:

Substitute for S. B. No. 11 and the pending amendment by striking out all below the enacting clause and substituting therefor the following:

Section 1. For the purpose of establishing a State monopoly on the sale of distilled liquors, as authorized by the Constitution, as amended by vote of the people on August 24, 1935, the

'Texas Distilled Liquors Association', herein after referred to as the 'Association', is hereby a body corporate with the powers incident thereto. The affairs of the Association shall be controlled and managed by a Board of three Directors to be appointed by the Governor, by and with the advice and consent of the Senate, upon the taking effect of this Act; one for a term of two years; one for four years; and one for six years; and the successors of such original appointees shall be similarly appointed at the expiration of their respective terms.

The Directors of the Association shall also constitute the Texas Liquor Control Board, and, as such, shall perform such duties as may be imposed upon such Board by law, such Board of Directors and Liquor Control Board shall hereinafter be referred to as the 'Board'.

Sec. 2. The Association shall have a paid-up capital stock of \$300,000, all of which shall be paid up, upon call therefor by the Board and shall be owned by the State; and said sum is hereby appropriated out of any money in the general revenue fund not otherwise appropriated.

Sec. 3. Distilled liquors means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution and includes, among other things, brandy, rum, gin and whiskey, and rectified or blended, or imitation whiskey, or any mixed bitters capable of producing intoxication.

Sec. 4. It shall be unlawful for any person, firm or corporation other than the Association, or its duly authorized vendors or other agents or representatives, to sell or deliver distilled liquors in this State to any person, firm or corporation other than the Association, or to purchase distilled liquors from any person, firm or corporation other than the Association or its duly authorized vendors or other agents or representatives.

Sec. 5. The term 'wet area', as used in this Act, means any county or justice precinct or incorporated city or town where the sale of distilled liquors is not prohibited by a local option election heretofore or hereafter held, and is lawful; and the term 'dry area' as used in this Act means any county or justice precinct or incorporated city or town where the sale of distilled liquors is prohibited by local option election

heretofore or hereafter held and is unlawful.

Within the limits of each wet area the Association acting through the Board shall establish and maintain, at such place or places as it shall approve, one or more stores for the sale of distilled liquors in accordance with the provisions of this Act and of regulations made thereunder, to be known as 'Distilled Liquor Association Stores', hereinafter referred to as 'stores'. No such store shall be located within any dry area nor continue to operate after the area in which it is located shall become dry. The Board shall, upon proper hearing, fix and determine, and may increase or decrease the number of stores to be maintained in each wet area, provided such number shall, in no event, be less than one for each such area, nor less than one for each 75,000 of the population residing within such area, according to the last preceding Federal census, nor more than one for each 50,000 of such population.

The Board shall from time to time fix the prices at which the various classes, varieties and brands of distilled liquors may be sold, which prices shall be the same at all State stores.

Sec. 6. It shall be unlawful to sell or offer for sale anything except distilled liquors in any such stores; and it shall be unlawful to sell distilled liquor, which is drinkable to any purchaser except a package sealed with the seal of the Association; and it shall be unlawful to open any such package on the premises of any store, or for any vendor or other agent or employees of the Board to permit any distilled or other liquor to be consumed on the premises of any store; or for any person to consume any distilled or other liquor on such premises.

Sec. 7. It shall be unlawful to sell or deliver any distilled liquor from the premises of any store or to keep such store open:

(a) After the hour of 9 o'clock in the afternoon of any day or before the hour of 8 o'clock in the morning of any day;

(b) On any holiday;

(c) On any day on which any national State or municipal or other local election is being held in the electoral district in which the store is situated, whether such election be a primary or final election or be held for the selection of officers or for the

adoption or rejection of any proposal submitted to the vote of the people;

(d) During such other period or on such other days as the Board may direct.

Sec. 8. The sale of distilled liquor at each store shall be conducted by a person appointed by the Board, who shall hold such position during the pleasure of the Board, to be known as a vendor, who shall, under the direction of the Board, be responsible for the carrying out of this Act, and the regulations made thereunder, so far as they relate to the conduct of such store and the sale of distilled liquor thereat.

Sec. 9. A vendor may sell to any person, who is the holder of a subsisting permit such liquor as that person is entitled to purchase under such permit, in conformity with the provisions of this Act and the regulations made thereunder.

Before the vendor shall make delivery of any liquor, other than beer, sold pursuant to this Section, he shall:

(a) Have first received an order in writing, dated and signed by the purchaser, setting out the number of his permit and the kind and quantity of the liquor ordered; and,

(b) Have received from the purchaser his permit and shall have indorsed thereon the kind and quantity of the liquor sold and the date of sale; and

(c) Have been paid the purchase price in cash.

Sec. 10. A vendor may sell liquor to any person upon the prescription of a physician licensed to practice medicine in this State given pursuant to this Act, but no more than one sale and one delivery shall be made on any one prescription.

Sec. 11. The principal office of the Board shall be in the City of Austin.

Sec. 12. The Board shall have authority to employ a secretary therefor, who shall not be a member of the Board and said secretary shall devote his whole time and attention to the business of the Board, and shall follow no other occupation whatever. The secretary of the Board shall receive an annual salary of Thirty-six Hundred Dollars (\$3600), and shall file a bond in the sum of Fifty Thousand Dollars (\$50,000), conditioned upon the correct accounting of all moneys coming into his office.

Sec. 13. The secretary of the Board shall hold his office during the pleasure of the Board.

Sec. 14. The Board shall have the following functions, duties and powers:

(a) To buy, import, or otherwise provide and have in its possession for sale, and sell distilled liquors, in the manner set forth in this Act;

(b) To control the possession, sale and delivery of distilled liquors in accordance with the provisions of this Act;

(c) To grant, refuse or cancel permits for the purchase of liquors;

(d) To lease, furnish and equip any building or land required for the operation of this Act;

(e) To buy or lease all plant and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this Act;

(f) To appoint vendors and also every office inspector, clerk or other employee required for the operation or carrying out of this Act, and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(g) To appoint officials to issue and grant permits under this Act;

(h) To perform such duties as the Legislature may prescribe pertaining to the regulation and control of the manufacture and/or sale of liquors other than distilled liquors;

(i) To determine the nature, form and capacity of all packages to be used for containing distilled liquor kept or sold under this Act;

(j) Without in any way limiting, or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the Board for the purpose of carrying into effect the provisions of this Act, or the regulations made thereunder.

Sec. 15. (1) The Board may make such regulations, not inconsistent with this Act, as the Board may deem necessary, for carrying out the provisions of this Act, and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in the preceding paragraph hereof, it is declared the power of the Board to make regulations in the manner set out in that para-

graph shall extend to and include the following:

(a) Regulating the equipment and management of stores and warehouses in which distilled liquor is kept or sold and prescribing the books and records to be kept therein;

(b) Prescribing the duties of the officers, clerks and servants of the Board, and regulating their conduct while in the discharge of their duties;

(c) Governing the purchase of distilled liquor and the furnishing of distilled liquor to State stores established under this Act;

(d) Determining the classes, varieties, and brands of distilled liquor to be kept for sale at any State store;

(e) Prescribing, subject to this Act, the days and hours during which stores shall be kept open for the sale of distilled liquor;

(f) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety or brand of distilled liquor kept for sale under this Act;

(g) Prescribing an official seal and official labels and determining the manner in which such seal or label shall be attached to every package of distilled liquor sold or sealed under this Act, including the prescribing of different official seals or different official labels for different classes, varieties and brands of distilled liquors;

(h) Prescribing forms to be used for the purpose of this Act or of the regulations made thereunder, and the terms and conditions in permits issued and granted under this Act;

(i) Prescribing the nature of the proof to be furnished and the conditions to be observed in the issuing of duplicate permits in lieu of those lost or destroyed;

(j) Prescribing the kinds and quantities of distilled liquor which may be purchased under permits of any class, including the quantity which may be purchased at any one time or within any specified period of time;

(k) Prescribing the form of records of purchase of distilled liquor by the holders of permits, and the reports to be made thereon to the

Board, and providing for inspection of the records so kept;

(l) Prescribing the manner of giving and serving notices required by this Act or the regulations thereunder;

(m) Prescribing the duties of officials authorized to issue permits under this Act;

(n) Prescribing the fees payable in respect of permits issued under this Act for which no fees are prescribed in this Act; and prescribing the fees for anything done or permitted to be done under the regulations made thereunder;

(o) Specifying and describing the place and the manner in which distilled liquor may be lawfully kept or stored;

(p) Specifying and regulating the time and periods when, and the manner, methods and means by which vendors and brewers shall deliver distilled liquor under this Act, and the time and periods when, and the manner, methods and means by which distilled liquor under this Act may be lawfully conveyed or carried:

(3) Whenever it is provided in this Act that any act, matter or thing may be done, if permitted or authorized by the regulations, or may be done in accordance with the regulations or as provided by the regulations, the Board, subject to the restrictions set out in the first paragraph of this Section, shall have the power to make regulations respecting such act, matter or thing.

Sec. 16. The members of the Board shall each receive from the Association their actual expenses while absent from home and engaged in the performance of their duty a per diem of Ten Dollars (\$10.00) a day while so engaged. One of the members of the Board shall be Chairman and shall be chosen by the Board, and shall hold his office until his successor shall be chosen by the Board and shall qualify. The Chairman of the Board, hereinafter referred to as the 'Chairman,' shall receive a salary of Six Thousand Dollars (\$6,000) per year, payable monthly by the Association, in lieu of per diem, and shall also receive his actual expenses while away from home and engaged in the performance of his duty. The Chairman

shall reside at Austin and shall devote his entire time to the performance of his duties as such.

Sec. 17. Whenever the Association shall possess net assets in excess of \$400,000, such excess shall from time to time, and at least once every three months, be distributed by said Board as follows:

Fifteen per centum (15%) of the net profits derived since the last distribution of profits from the operations of stores in each county in which such stores are located, shall be allocated by the Board and paid to the treasurer of such county for the benefit of its general fund; and fifteen per centum (15%) of the profits derived from liquor stores operated in any incorporated city or town shall be allocated and paid to such city or town for the benefit of its general fund, and the remainder of such excess after allocations and payments have been made to the counties and incorporated cities and towns shall be paid to the State Treasurer for the benefit of the old-age pension fund and shall be disbursed according to law.

Sec. 18. It shall be the duty of the Board, with the approval of the Governor to select a Board of Chemical Advisers, composed of three eminent Texas chemists, whose duty it shall be to make chemical analysis of all beverage alcohol purchased or sold by the Association; and it shall be unlawful for the Association to purchase or sell any distilled liquor which said Chemical Board shall find upon chemical analysis to contain any poisonous substance or element or to be misbranded or deleterious to public health, if consumed in moderate quantities.

Sec. 19. All drinkable whiskey sold in this State which is not sold upon the bona fide prescription of a physician, licensed to practice medicine in the State, made and proven as provided by law, shall be conclusively presumed to be sold for beverage purposes.

Sec. 20. The Association may adopt reasonable rules and regulations providing for the sale in dry areas of such distilled liquors as it may deem advisable for medicinal purposes, but such liquors so sold for medicinal purposes shall be sold only upon the prescription of a phy-

sician in the legitimate practice of medicine, duly licensed under the laws of Texas; and such prescription shall be in form prescribed by the Board and shall be signed by the physician and filed with the Board and such prescription so filed or a duly certified copy thereof, or a proven copy thereof, shall constitute the only competent proof that such prescription was issued and that distilled liquor was sold upon it.

Sec. 21. Upon application in the prescribed form being made to any employee, authorized by the Board to issue permits accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted such permit for the purchase of liquor under this Act, the employee shall issue to the applicant a permit of the class applied for, as follows:

(a) Where the application is for an individual permit and is made by an individual of the full age of twenty-one (21) years, an individual permit in the prescribed form entitling the applicant to purchase distilled liquor for beverage purposes; the fee for such permit to be fifty cents.

(b) Where the application is for a special permit and is made by a physician, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health or as a home devoted exclusively to the care of aged people; the fee for such permit is fifty cents.

(c) Where the application is for a special permit by a person engaged within the State in mechanical or manufacturing business or in scientific purposes requiring alcohol for use therein, a special permit in the prescribed form entitling the applicant to purchase alcohol for the purpose named in the permit, at such fee as may be fixed by the Board.

Sec. 22. Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

It shall be unlawful for any person to apply in any false or fictitious name for the issuance to him of a permit, or to furnish a false or fic-

titious address in his application for a permit.

Sec. 23. No permit shall be valid or be accepted or used for the purchase of liquor until the applicant for the permit has written his signature thereon in the prescribed manner, for the purposes of identification as the holder thereof, in the presence of the employee to whom the application is made.

Sec. 24. No individual permit shall be issued to any corporation, partnership, or other unincorporated association or individual.

Sec. 25. Every permit shall expire at midnight on the thirty-first day of December of the year for which the permit was issued.

Sec. 26. Where the holder of any permit issued under this Act violates any provision of this Act, or of the regulations, or is otherwise disqualified from holding a permit, the Board, upon proof to its satisfaction of the fact or existence of such violation, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the Board sees fit, or may cancel the permit.

Sec. 27. Upon receipt of notice of the suspension or cancellation of his permit, the holder of the permit shall forthwith deliver up the permit to the Board. Where the permit has been suspended only, the Board shall return the permit to the holder at the expiration or termination of the period of suspension. Where the permit has been suspended or cancelled, no employee shall knowingly issue, to the person whose permit is suspended or cancelled, a permit under this Act until the end of the period of suspension or within the period of one year from the date of cancellation.

Sec. 28. Where any permit is presented to an employee by a person who is not the holder of the permit, or where any permit which is suspended or cancelled is presented to an employee, the employee shall retain the permit in his custody and shall forthwith notify the Board of the fact of its retention.

Sec. 29. Any physician licensed to practice medicine in this State, who in the legitimate practice of medicine deems intoxicating liquor necessary for the health of a pa-

tient whom he has seen or visited professionally, may give to the patient a prescription therefor; provided that such prescription be dated as of the day on which signed and shall state the name, address of patient, disease for which prescribed, quantity prescribed, and signed by the physician showing the date and address of physician, said prescription shall not be refilled. Said prescription, when filled, shall be kept on file by the person, firm or association filling the same for two years, subject to inspection by any person charged with the enforcement of this law or any other officer of the law.

Sec. 30. Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this Act for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medicinal purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need and every person in charge of an institution who administers liquor in evasion or violation of this Act shall be guilty of a violation of this Act.

Sec. 31. No person shall transport into this State or between incorporated towns or cities in this State, or upon any public highway of this State, any distilled liquor, unless the person accompanying and in charge of such shipment shall have present and available for exhibition such bills of lading, evidence or ownership, or shipment, as the Board may, by rules and regulations, require, and no person shall refuse to exhibit or permit to be read or examined any such bills of lading, evidence of ownership, or shipment, by any agent or employee of the Board, or any peace officer of this State.

Sec. 32. If any person shall forge

or counterfeit or cause or permit to be forged or counterfeited any stamp, die, plate, official signature, certificate, evidence or tax payment, permit, license, or other instrument, or any part of any stamp, die, plate, official signature, certificate, evidence of tax payment, permit, license, or other instrument which has been provided for in this Act or which shall hereafter be provided for or shall knowingly utter, use or pass the same, he shall be deemed guilty of a felony and shall be punished by confinement in the state penitentiary for any term of years not less than one nor more than five.

Sec. 33. Any person or persons violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than One Thousand Dollars (\$1,000) or by both such fine and imprisonment.

Any person found guilty of a second or subsequent offense under this section shall be deemed guilty of a felony, and shall be punished by imprisonment in the penitentiary for a term of not less than one (1) year, nor more than three (3) years, and by a fine of not more than Three Thousand Dollars (\$3000).

And any such person, firm or corporation violating any provision of this Act shall likewise forfeit and pay to the State a penalty of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1000) to be sued for and recovered by the Attorney General of Texas, in the name of the State, in any District Court of Travis County, and each day during which such provision of this Act shall be violated shall constitute a separate criminal offense and subject the violator to a separate penalty.

Sec. 34. In addition to other taxes levied and imposed by law there is hereby levied upon all persons, firms or corporations selling distilled liquors to the Association a tax of fifty cents (50c) per gallon upon all drinkable distilled liquors so sold; and it shall be the duty of the Board to see that such taxes are paid before such purchases are consummated.

Sec. 35. Every vendor and every

official authorized by the Board to issue permits under this Act may administer any oath and take and receive any affidavit or declaration required under this Act or the regulations.

Sec. 36. The Association, acting through the Board is hereby authorized to incur indebtedness in the administration of this Act for necessary expenses and the acquisition of necessary property and merchandise; provided, however, that the total amount of outstanding indebtedness shall not at any time exceed the sum of One Hundred Thousand Dollars (\$1000,000), and provided further that any indebtedness so incurred by the Board shall be paid solely out of the moneys arising in the administration of this Act.

Sec. 37. If any section, paragraph, sentence or phrase of this Act be declared invalid by a competent Court, then such invalid portion shall not in any way affect the remainder of this Act, and it is hereby declared as the legislative intent that the remainder of this Act would have been passed by the Legislature notwithstanding the invalidity of such section, paragraph, sentence or phrase.

The fact that on last August 24, 1935, the people of this State voted a constitutional amendment providing for an old-aged pension, and for the further fact that it behooves the Legislature to pass legislation providing for the payment and making it possible for the people to receive this old-age pension constitutes an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be, and the same is hereby suspended and this Act shall take effect and be in force from and after its passage and it is so enacted.

MARTIN.

Read.

Motion to Table.

Senator Hornsby moved to table the substitute amendment by Senator Martin.

Motion pending.

Senator Martin asked unanimous consent to yield his time to Senator Sanderford to close the debate.

Objections were heard.

Point of Order.

Senator Rawlings raised the point of order that Senator Martin could yield to a co-author to close the debate, without the unanimous consent of the Senate.

The Chair, President Pro Tem. W. R. Poage sustained the point of order.

Senator Sanderford was recognized to speak.

The motion to table prevailed by the following vote:

Yeas—15.

Blackert.	Pace.
Cotten.	Poage.
Davis.	Redditt
DeBerry.	Shivers.
Hornsby.	Small.
Isbell.	Sulak.
Moore.	Van Zandt.
Oneal.	

Nays—11.

Beck.	Nelson.
Burns.	Rawlings.
Collie.	Regan.
Hill.	Sanderford.
Holbrook.	Woodruff.
Martin.	

Present—Not Voting.

Stone.	Westerfeld.
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Absent.

Hopkins.	Neal.
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Absent—Excused.

Fellbaum.

The question recurred on adoption of the pending amendment by Senators Small and Woodruff.

Previous Question.

Senator Hill moved that the Senate order the previous question on the pending amendment to S. B. No. 11.

The motion was duly seconded.

The previous question was ordered by the following vote:

Yeas—16.

Blackert.	Hill.
Burns.	Hornsby.
Collie.	Isbell.
Cotten.	Nelson.
DeBerry.	Oneal.

Pace.	Small.
Poage.	Van Zandt.
Redditt.	Woodruff.

Nays—9.

Holbrook.	Shivers.
Martin.	Stone.
Moore.	Sulak.
Rawlings.	Westerfeld.
Regan.	

Absent.

Beck.	Neal.
Hopkins.	Sanderford.

(Pair Recorded.)

Senator Davis (present) who would vote yea, with Senator Fellbaum (absent) who would vote nay.

The pending amendment by Senators Small and Woodruff was adopted by the following vote:

Yeas—15.

Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
DeBerry.	Redditt.
Hill.	Small.
Hornsby.	Van Zandt.
Isbell.	Woodruff.
Nelson.	

Nays—11.

Blackert.	Sanderford.
Holbrook.	Shivers.
Martin.	Stone.
Moore.	Sulak.
Rawlings.	Westerfeld.
Regan.	

Absent.

Neal.

(Pairs Recorded.)

Senator Beck (present) who would vote yea, with Senator Hopkins (absent) who would vote nay.

Senator Davis (present) who would vote yea, with Senator Fellbaum (absent) who would vote nay.

House Bill No. 71.

Senator Small received unanimous consent to suspend the regular order of business and to take up out of order H. B. No. 71.

The Chair laid before the Senate on its second reading the following bill:

H. B. No. 71, A bill to be entitled "An Act authorizing school trustees in all counties of the State, having a population of not less than Two Hundred Ninety Thousand (290,000) or more than Three Hundred Twenty Thousand (320,000) inhabitants according to the last preceding Federal Census to issue interest bearing warrants in payment of salaries of employees; specifying that the rate of interest shall not exceed four per cent (4%) per annum; limiting the amount of warrants to be issued; etc., and declaring an emergency."

Amend H. B. No. 71, page 2, Section 3, by striking out the word "District," in line 4, and inserting in lieu thereof the word "Counties."

SMALL.

Read and adopted.

The rule requiring committee reports to lie over one day was suspended by unanimous consent.

The committee report recommending that the bill be not printed was adopted by unanimous consent.

The bill was read second time, as amended, and passed to third reading.

On motion of Senator Small, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 71 was put on its third reading and final passage by the following vote:

Yeas—29.

Beck.	Oneal.
Blackert.	Pace.
Burns.	Poage.
Collie.	Rawlings.
Cotten.	Redditt.
Davis.	Regan.
DeBerry.	Sanderford.
Hill.	Shivers.
Holbrook.	Small.
Hopkins.	Stone.
Hornsby.	Sulak.
Isbell.	Van Zandt.
Martin.	Westerfeld.
Moore.	Woodruff.
Nelson.	

Absent.

Neal.

Absent—Excused.

Fellbaum.

Read third time and finally passed by the following vote:

Yeas—28.

Beck.	Oneal.
Blackert.	Pace.
Burns.	Poage.
Collie.	Rawlings.
Cotten.	Redditt.
Davis.	Regan.
DeBerry.	Sanderford.
Hill.	Shivers.
Holbrook.	Small.
Hornsby.	Stone.
Isbell.	Sulak.
Martin.	Van Zandt.
Moore.	Westerfeld.
Nelson.	Woodruff.

Absent.

Hopkins.	Neal.
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Absent—Excused.

Fellbaum.

Senate Bill No. 11.

Senator Small had the floor on S. B. No. 11 and yielded to Senator Pace.

Motion to Recess.

Senator Pace at 12:20 o'clock p. m. moved that the Senate recess until 8:00 o'clock p. m. Tuesday.

Senator Rawlings moved that the Senate recess until 10:00 o'clock a. m., Wednesday.

The motion by Senator Rawlings lost by the following vote:

Yeas—11.

Blackert.	Regan.
Holbrook.	Sanderford.
Isbell.	Shivers.
Martin.	Stone.
Moore.	Sulak.
Rawlings.	

Nays—17.

Beck.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Redditt.
Davis.	Small.
DeBerry.	Van Zandt.
Hill.	Westerfeld.
Hornsby.	Woodruff.
Nelson.	

Absent—Excused.

Fellbaum.	Neal.
Hopkins.	

Recess.

The motion by Senator Pace prevailed by the following vote:

Yeas—19.

Beck.	Nelson.
Blackert.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Redditt.
Davis.	Small.
DeBerry.	Van Zandt.
Hill.	Westerfeld.
Hornsby.	Woodruff.
Isbell.	

Nays—9.

Holbrook.	Sanderford.
Martin.	Shivers.
Moore.	Stone.
Rawlings.	Sulak.
Regan.	

Absent—Excused.

Fellbaum.	Neal.
Hopkins.	

After Recess.

The Senate met at 8:00 o'clock p. m., pursuant to recess and was called to order by President Pro Tem. W. R. Poage.

Motion to Print Address.

Senator Sanderford asked unanimous consent to have printed in the Journal the address delivered by Senator T. J. Holbrook at the reinterment of the remains of Sergeant James Austin Sylvester.

Unanimous consent was granted.

Point of Order.

Senator Moore raised a point of no quorum.

The roll call was ordered.

The roll call developed a quorum present.

Senate Bill No. 11.

Pending business was S. B. No. 11. Senator Small had the floor.

Amend Senate Bill No. 11 as Amended.

Amendment to paragraph "g", Section 15, page 7, Senate Bill No. 11, by adding the following to line 22:

"Provided that in the case of wines it shall be lawful for the holder of

a package store permit to sell the same not for consumption on the premises where sold in quantities of fifty-two (52) gallons, or less, per sale, and for that purpose may break or open any package, receptacle or container and transfer said wine to another receptacle, package or container of the same or different size. Provided further, that the vendor in all such cases shall affix to the receiving receptacle, package or container a stamp to be issued by the Commissioner stating that the contents had been withdrawn from a tax-paid container."

SMALL.

Read and adopted.

Amendment to Paragraph "G", S. B. No. 11, as amended Page 7. After the letters and figures "Five Hundred (\$500.00) Dollars" at the end of the paragraph fixing license fees add the following:

"Provided that the annual license fee for package store permit to sell wines only shall be: in cities and towns having a population of two thousand (2,000) inhabitants or less, according to the last preceding Federal Census, the fee shall be ten (\$10.00) Dollars; in cities and towns having a population of more than two thousand (2,000) and less than five thousand (5,000) inhabitants, according to the last preceding Federal Census, the fee shall be Fifteen (\$15.00) Dollars; in cities and towns having a population of more than Five Thousand (5,000) and less than Ten Thousand (10,000) inhabitants, according to the last preceding Federal Census, the fee shall be Twenty (\$20.00) Dollars; in cities and towns having a population of more than Ten Thousand (10,000) inhabitants, according to the last Federal Census, the fee shall be Twenty-Five (\$25.00) Dollars. The fee for a package store permit outside the limits of an incorporated city or town shall be Ten (\$10.00) Dollars."

SMALL

Read and adopted.

Amend Senate Bill No. 11 as amended by striking out all of subsection (q) and subsection (r) of section 15, pages 10 and 11 of printed bill, and inserting in lieu thereof the following:

"(q) Retailer's Permit. The Board is authorized to issue Retailer's Permits. The holders of such permits

shall be authorized to sell from broken packages or unsealed containers for consumption on the premises where sold, vinous and malt beverages containing in excess of one-half of one (1%) per cent of alcohol by volume, and not more than fourteen (14%) per cent of alcohol by volume.

The annual license fee for a retail permit shall be Sixty Dollars (\$60); provided that if same is issued for a dining car it shall be Five Dollars (\$5) for each car; provided, however, that a dining car permit shall be inoperative in any dry area, as the same is defined in this Act.

(r) No person holding a Package Store Permit shall be issued a Retailer's Permit. No person holding a Retailer's Permit shall be issued a Package Store Permit. And the issuing, or the receiving of a permit, as prohibited herein, shall be unlawful.

(s) It shall be unlawful for any person authorized to sell wine or beer for consumption on the premises where sold, to have in his possession on his premises any distilled spirits of any character and/or liquor composed in whole or in part of distilled spirits."

SMALL

Read and adopted.

Amend S. B. No. 11 as amended, by adding at end of subsection (f) of Section (56) the following:

(g) There shall be levied and collected by the Board on all beer and wine placed in warehouses, an inspection fee at the rate of Fifty (50) Cents per barrel: Provided, that any manufacturer of this State who shall have during the current year paid for a manufacturer's license under this Act shall be exempt from payment of the inspection fee: Provided no inspection fee shall be levied and collected on any beer manufactured in any state where the process of manufacture is inspected in a manner deemed by the Board to be adequate protection of the consumers of beer against the use of any adulterant or any ingredient calculated to have a deleterious effect."

WOODRUFF.

Read and adopted.

Amend S. B. No. 11 as amended, by adding in Section 11 a subsection lettered, and reading as follows:

(e) That the applicant has been convicted of a felony or been engaged, directly or indirectly in the sale of intoxicating liquors within this State at any time during the two years next preceding August 24, 1935, unless it be expressly shown to the satisfaction of the Board that such applicant so selling such liquor was acting under a license so to do duly issued by the State of Texas.

WOODRUFF.

Read.

Amend Woodruff amendment by striking out the word "has been convicted of a felony or"

MARTIN.

Read and adopted.

The amendment by Senator Woodruff as amended was adopted by the following vote.

Yeas—17.

Beck.	Neal.
Collie.	Nelson.
Cotten.	Oneal.
Davis.	Pace.
DeBerry.	Poage.
Hill.	Small.
Ifornsby.	Van Zandt.
Isbell.	Woodruff.
Martin.	

Nays—12.

Blackert.	Regan.
Burns.	Sanderford.
Holbrook.	Shivers.
Moore.	Stone.
Rawlings.	Sulak.
Redditt.	Westerfeld.

Absent—Excused.

Fellbaum. Hopkins.

Amend S. B. No. 11 as amended, page 13, line No. 22, by inserting the following:

It shall be unlawful for any person to manufacture, sell, possess or transport for any purpose except medicinal and manufacturing purposes, as in this Act hereinafter provided, in any dry area under this or any other Act in this State, any liquor containing alcohol in excess of one-half of one per cent by volume provided, however, it shall be lawful for the holder of carrier permits and private carrier permits to transport such liquor from one wet

area to another wet area where, in the course of such transportation, it is necessary or convenient to cross such dry area provided further that this section shall not apply to the holders of industrial or medicinal permits; provided further that this section shall not apply to wet areas under the terms of Chapter 11, Acts of the Regular Session of the Forty-third Legislature, when the liquor in question is a vinous or malt liquor that does not contain alcohol in excess of four per centum by weight. Possession of any liquor containing alcohol in excess of one-half of one per cent by volume by any resident within a dry area of the State, as above defined, shall be prima facie evidence that such possession is unlawful, and is prohibited by this Act, unless the same be in a container of a capacity not exceeding one quart and bearing the label of one holding a medicinal permit, showing a sale not more than thirty days prior to the date of such possession, and showing such sale to be on a bona fide physician's permit. Any person violating any provision of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine of not less than Fifty Dollars nor more than Five Hundred Dollars, or by imprisonment in the county jail for not exceeding one year.

STONE,
MOORE,

Read.

Pending.

Amend the Stone amendment by striking out the words "one quart" and inserting in lieu thereof "one-half pint."

MOORE.

Read.

Pending.

Senator Stone had the floor.

Point of Order.

Senator Martin raised the Point of Order that the discussion was not germane to the amendment.

The Chair overruled the Point of Order.

Substitute for Pending Stone Amendment.

It shall be unlawful for any person to manufacture, sell, possess, or

transport for the purpose of sale in any dry area under this or any other act in this State any liquor containing alcohol in excess of one-half of one per centum by volume; provided however, it shall be lawful for the holders of carrier permits and private carrier permits to transport such liquor from one wet area to another wet area where, in the course of such transportation, it is necessary or convenient to cross such dry area; provided further that this Section shall not apply to the holders of industrial or medicinal permits; provided further, that this Section shall not apply to vinous or malt liquor that does not contain alcohol in excess of four (4%) per centum by weight in any area where its sale has been legalized. And provided further that prosecutions under this Section, the indictment, complaint, and/or information, shall be deemed sufficient when it shall substantially allege as follows:

Did unlawfully sell, possess or transport, spirituous, vinous and malt liquors capable of producing intoxication for the purpose of sale.

BURNS,
VAN ZANDT.

Read.

Motion to Table.

Senator Woodruff moved to table the substitute amendment.

The motion prevailed by viva voce vote.

Motion to Table.

Senator Woodruff moved to table the amendment by Senator Stone.

Senator Stone was recognized to close the debate on the amendment.

Senator Stone yielded his time to Senator Rawlings.

Point of Order.

Senator Van Zandt raised the point of order, that Senator Stone could not yield the floor to any Senator, other than the co-author of the amendment, and cited rule 22.

The Chair, President Pro Tem. W. R. Poage overruled the point of order.

Previous Question.

Senator Woodruff moved that the Senate order the previous question

on the pending amendment and engrossment of S. B. No. 11.

The motion was not seconded.

The question recurred on the motion to table the Stone amendment.

The motion to table prevailed by the following vote:

Yeas—19.

Beck.	Neal.
Blackert.	Nelson.
Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
Davis.	Redditt.
DeBerry.	Small.
Hill.	Van Zandt.
Hornsby.	Woodruff.
Isbell.	

Nays—9.

Holbrook.	Sanderford.
Martin.	Stone.
Moore.	Sulak.
Rawlings.	Westerfeld.
Regan.	

Absent.

Shivers.

Absent—Excused.

Fellbaum.	Hopkins.
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Amend S. B. No. 11 as amended, Section 26, by striking out the following: "It shall be unlawful for the holder of any permit selling liquor at retail, in broken packages, to employ in his place of business any person to sell, deliver or otherwise handle any liquors, under the age of twenty-one years."

And insert in lieu thereof the following:

"That it shall be unlawful to employ anyone to work in a place where intoxicating liquors are sold who is under the age of twenty-one years and not being a qualified juror under the Constitution and Laws of the State of Texas, provided, however, that this shall not apply to cafes and dining rooms where drinks are sold, incidentally to the conduct of said business, not in excess of 4% of alcohol by volume, and drug stores lawfully selling liquor."

COTTEN.

Read.

The amendment by Senator Cotten was adopted by the following vote:

Yeas—20.

Beck.	Nelson.
Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
Davis.	Rawlings.
DeBerry.	Redditt.
Hill.	Sanderford.
Hornsby.	Small.
Isbell.	Van Zandt.
Neal.	Woodruff.

Nays—8.

Blackert.	Regan.
Holbrook.	Stone.
Martin.	Sulak.
Moore.	Westerfeld.

Absent.

Shivers.

Absent—Excused.

Fellbaum. Hopkins.

Amend S. B. No. 11 as amended by adding after the words and figures "Five Hundred Dollars (\$500.00)," line 41, page 7, the following: "The license fee outside of incorporated cities and towns shall be One Hundred (\$100.00) Dollars for a package store permit."

VAN ZANDT.

Read and adopted.

Senator Van Zandt sent up S. B. No. 12, as an amendment to S. B. No. 11; as amended.

Amend S. B. No. 11 as mended by striking out all below the enacting clause and substitute in lieu thereof the following:

Section 1. This Act may be cited as the "Texas Liquor Control Act."

Sec. 2. This Act shall be deemed an exercise of the police power of the State for the protection of the welfare, health, peace, morals, temperance and safety of the people of the State, and all its provisions shall be liberally construed for the accomplishment of that purpose.

Sec. 3. (a) The term "open saloon," as used in this Act, means any place where any intoxicants whatever, manufactured in whole or in part by means of the process of distillation or any liquor compounded or composed in part of distilled spirits, other than wines containing not

in excess of seventeen per cent (17%) alcohol by weight is sold or offered for sale in broken or unsealed containers, or any place where any such liquor or liquors are sold or offered for sale for human consumption on the premises where sold.

(b) Any person, whether as principal or agent or employee, who shall operate or assist in operating or who shall be directly or indirectly interested in operating any open saloon in the State shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for not more than one year. Any person who is twice convicted under the provisions of this section shall for the second and all subsequent offenses be punished by fine of not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, and by confinement in the county jail for not less than thirty days nor more than one year.

(c) Whenever the word liquor is used in this Act it shall mean and refer to any liquor containing alcohol in excess of four (4%) per cent by weight unless otherwise indicated.

(d) Any person who violates any provision of this Act other than those contained in this section shall be subject to the penalties prescribed by Sections 45, 33a, b and c.

Sec. 4. Unless otherwise herein expressly excepted it shall be unlawful for any person to manufacture, sell, possess for the purpose of sale import into this State, or transport any alcohol or any liquor. Unless the exceptions hereinafter made to this section are clear and specific they shall not obtain in favor of any person with respect to any prohibited act and they shall be strictly construed for the accomplishment of this purpose. It is further expressly provided that any rights or privileges that are granted herein to any person as exceptions to the prohibitions contained in this section shall be enjoyed and exercised only in the manner provided by this Act.

Sec. 5. It shall be unlawful for any person to manufacture, sell, possess for the purpose of sale, import into this State, or transport liquor

in wet areas or dry areas without first having complied with all other terms and provisions of this Act; provided however that the prohibition contained in this section against the transportation of liquor shall not apply to a person who has purchased such liquor for his own consumption and is transporting the same from a place where the sale thereof was lawful and to a place where its possession by him is lawful; provided further, that the prohibition contained in this section against the importation and transportation of liquor shall not apply to a person who is bringing into this State not more than two (2) quarts of liquor for his own personal use.

Sec. 6. It shall be unlawful for any person to manufacture, sell, possess, or transport for the purpose of sale in any dry area under this or any other act in this State any liquor containing alcohol in excess of one-half of one per centum by volume; provided however it shall be lawful for the holders of carrier permits and private carrier permits to transport such liquor from one wet area to another wet area where, in the course of such transportation, it is necessary or convenient to cross such dry area; provided further that this section shall not apply to the holders of industrial or medicinal permits; provided further, that this section shall not apply to vinous or malt liquor that does not contain alcohol in excess of four (4%) per centum by weight in any area where its sale has been legalized.

Sec. 7. There is hereby created the Division of Liquor Control as a division in the office of the Tax Commissioner of the State of Texas. The division shall be headed by the Tax Commissioner. The Commissioner, for the additional duties herein imposed, shall receive for his services compensation at the rate of Eighteen Hundred (\$1800.00) Dollars per annum, together with actual and necessary traveling expenses while engaged in the performance of his duties away from the seat of government.

The Commissioner shall appoint an Administrator who shall serve at the Commissioner's pleasure and who shall have power and authority when so authorized by the Commissioner

to discharge the duties and exercise the powers of the Commissioner. The Administrator shall receive a salary not exceeding Five Thousand (\$5,000.00) Dollars per annum.

The Commissioner shall appoint all necessary officers, attorneys, clerks, stenographers, inspectors, auditors, chemists, experts, and employees to properly enforce the provisions of this Act, all of whom shall serve at his pleasure. No person shall be eligible for any appointment who has any connection whatever with any person engaged in or conducting any liquor business of any kind, or who holds stock or bonds therein, or who has any pecuniary interest therein, nor shall any such person receive any commission or profit whatever from, or have any interest whosoever in the purchases or sales made by persons authorized by this Act to manufacture, purchase, sell or otherwise deal in the liquor business.

The Administrator shall act as manager, secretary and custodian of all records unless the Commissioner shall otherwise order, and shall perform such other duties as the Commissioner may prescribe.

The Administrator shall devote his entire time to said office and shall give a surety bond for the faithful performance of his duties in such form as the Commissioner may prescribe and in an amount of not less than Ten Thousand (\$10,000.00) Dollars. The Commissioner shall fix the duties, salaries and wages of all employees authorized by this Act but such compensation, salaries and wages shall not be greater than the salaries fixed for similar positions and duties in other departments of the State government. The salaries herein authorized shall not continue in effect beyond the effective date of the general appropriation bill of the Forty-fourth Legislature. The Commissioner shall likewise have power to require any employee to give bond for the faithful performance of his duties in such an amount as he may deem adequate.

It shall be the duty of the Commissioner, during the month of January of each year, to make a report to the Governor concerning his administration of this Act, and including a statement of the revenues derived herefrom, together with a detailed statement of the expenses

incurred by the Division, and further, a list of recommendations designed to strengthen the enforcement hereof.

The Commissioner is authorized and directed to prescribe such rules and regulations as may be necessary to carry out his powers and duties and to amend or repeal the same.

Sec. 8. Among others, the functions, powers, and duties of the Commissioner shall include the following:

(a) To regulate the manufacture, possession, sale, purchase, transportation, importation, and delivery of liquor in accordance with the provisions of this Act, and make all necessary rules and regulations to fully and effectually accomplish such purpose.

(b) To grant, refuse, suspend, or cancel permits for the purchase, transportation, importation, sale or manufacture of liquor or other permits in regard thereto.

(c) The taxes and license fees imposed by this Act shall be paid or collected by the Commissioner.

(d) To investigate and aid in the prosecution of violations of this Act and other acts relating to liquor, to make seizure of liquor manufacture, sold, kept, imported or transported in contravention hereof, and apply for the confiscation thereof whenever required by this Act, and cooperate in the prosecution of offenders before any court of competent jurisdiction.

(e) To exercise all other powers, duties and functions conferred by this Act, and all powers incidental, convenient or necessary to enable it to administer or carry out any of the provisions of this Act.

(f) To require that any liquor sold in this State shall conform in all respects to the advertised quality and quantity of such products.

(g) To license, regulate and control the use of alcohol and liquor for scientific, pharmaceutical and industrial purposes, and to provide by regulation for the withdrawal thereof from warehouses and denaturing plants and to prescribe for the manner in which the same may be used for scientific research for hospitals and sanatoriums, in industrial plants, and for other manufacturing purposes tax free.

Sec. 9. All rules and regulations of the Commissioner shall be pro-

mulgated by publication in at least five (5) newspapers (such newspapers being published in representative areas of the State) published in the State for three (3) consecutive days; and by posting the same for five (5) successive days in a prominent place at his office and by mailing a copy of the said rules and regulations to the County Clerk of each county in the State where the sale of liquor is authorized, for record. Such rules and regulations shall become operative when the certificate of the Administrator as to such publication, posting and mailing shall have been filed in the office of the Commissioner and the filing of such certificate shall be prima facie evidence that this section has been complied with.

Sec. 10. The Commissioner, the Administrator and any special examiner or inspector under the direction of the Commissioner, shall, for the purposes contemplated by this Act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, documents and testimony.

If a witness in attendance before the Commissioner or one of his authorized representatives refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book, record or paper when ordered to do so by the Commissioner, the Commissioner may apply to the Judge of the District Court of any county where such witness is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than five (5) days, directing such witness to show cause before the Judge who made the order, or any other District Judge of said county, why he should not be punished for contempt; upon the return of such order the Judge before whom the matter shall come on for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to

be examined or answer a legal or pertinent question, or to produce a book, record or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the District Court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Commissioner shall be paid their fees and mileage out of funds herein provided.

Sec. 11. No person shall import into this State any liquor from any source unless a permit be first obtained from the Commissioner and any person so purchasing or importing liquor in violation of this section shall be subject to the penalties hereinafter provided. In addition to the penalties hereafter provided, any person violating the provision of this section shall forfeit the liquor so imported to the Commissioner as herein provided.

Sec. 12. It shall not be necessary in any information, complaint or indictment to negative any exception contained in this Act concerning any prohibited Act; provided however, that any such exception made herein may be urged as a defense by any person charged by such complaint, information or indictment.

Sec. 18. Every applicant for a brewer's, distiller's, rectifier's wholesaler's, beer and wine wholesaler's, or package store permit under this Act shall give notice of such application by publication for once a week for two consecutive weeks in a newspaper of general circulation and regularly published in the city or town in the county in which applicant's place of business is located, or if such applicant's place of business is not located in a city or town wherein there is a qualified newspaper, then such notice may appear in any newspaper in the county. In any county in which no qualified newspaper is published, the notice shall be published in a qualified newspaper published in the closest neighboring county. Such publication shall constitute a notice to all parties desiring to protest the granting of such permit upon any of the grounds upon which the Commissioner may refuse to grant an application for a permit.

Such notice shall set forth the grounds of objection contained in subdivision (b) to (i) inclusive of Section 14 of this Act. Each of such notices shall be published in no less than 10-point type. The Commissioner may require of every applicant for a permit the recommendation in writing of the County Judge of the county of his residence and he shall take such recommendation into consideration before granting or refusing such license. The Commissioner shall have authority to issue temporary permits for periods not exceeding ninety (90) days immediately following the passage of this Act, but not thereafter.

Sec. 14. The Commissioner shall refuse to issue a permit to any applicant if he has reasonable grounds to believe any of the following to be true:

(a) That applicant has not furnished an acceptable bond.

(b) That the applicant lacks sufficient funds to maintain an establishment properly.

(c) That an applicant to sell at retail has been provided with funds by or has any connection with a manufacturer of, or wholesale dealer in, liquor.

(d) That the applicant is in the habit of using alcoholic beverages to excess or habit-forming drugs.

(e) That the applicant had made false statements to the Commissioner concerning any fact material to the granting or refusal of his application.

(f) That the applicant is not a citizen of the United States or of this State, or is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(g) That the applicant has been convicted of violating any of the liquor laws of this State, general or local, including the provisions of this Act, or of any rule or regulation promulgated in pursuance hereof, or has been convicted at any time of a felony.

(h) That the applicant has maintained a noisy, lewd, disorderly or unsanitary establishment.

(i) That applicant has ever been engaged in the business of importing, manufacture, transporting or selling liquor in violation of the laws of Texas.

(j) That there is any other reason which, in the opinion of the Commissioner, based on general welfare, health, peace, morals and safety of the people, warrants his refusal to grant such permit.

Sec. 15. The Commissioner shall cancel or suspend after notice and hearing any such permit granted if he finds or has reasonable ground to believe any of the following to be true:

(a) That the permittee has violated any provision of this Act or Acts amendatory thereof or any rule or regulation of the Commissioner adopted pursuant thereto.

(b) That the permittee had made any false representations or statements to the Commissioner in order to induce or prevent action by the Commissioner.

(c) That the permittee is not maintaining an acceptable bond.

(d) That any retail permittee is acting as an agent of a manufacturer or wholesaler of alcoholic liquors, or has borrowed money or property or accepted gratuities therefrom, or has any connection therewith.

(e) That the permittee maintains a noisy, lewd, disorderly or unsanitary establishment or has been supplying impure or otherwise deleterious beverages.

(f) That the permittee is insolvent or incompetent or physically unable to carry on the management of his establishment.

(g) That the permittee is in the habit of using liquor to excess or habit-forming drugs.

(h) That the permittee knowingly has sold liquor to persons under twenty-one years of age, to persons known to be drunkards, or to persons visibly intoxicated at the time of sale.

(i) That the permittee has misrepresented to a customer or the public any liquor sold by him.

(j) That the permittee, since the granting of his permit, has been convicted of a felony, or had been guilty of violating any of the liquor laws of this State, general or local, including provisions of this Act, or any rule or regulation promulgated in pursuance of this Act.

(k) That there is any other reason which, in the opinion of the Commissioner, based on the general

welfare, health, peace, morals and safety of the people of this State, warrants cancelling or suspending such permit.

The governing authorities of any city or town or the Commissioners Court of any county shall have power to institute proceedings for the revocation or suspension of any permit granted hereunder. Such proceedings may be instituted by the filing of a complaint with the Commissioner, and it shall be the duty of the Commissioner to forthwith hear the same in accordance with the terms of this Act.

Notice of cancellation or suspension, stating the reason therefor, shall be served upon the permittee, or upon whatever person may be in charge temporarily or otherwise, of the licensed premises, or shall be affixed to the outside of the door of the licensed premises, or shall be sent by United States registered mail addressed to the permittee at the licensed premises, and said cancellation notice shall be published by the Commissioner once a week for three consecutive weeks in the county in which the licensed premises are located, or if no newspaper is published in said county, in a newspaper in a neighboring county. Cancellation or suspension shall take effect upon the affixing, service, delivery, or first publication of such notice. Such affixing, service or delivery or publication of a cancellation or suspension shall be adequate notice to all parties concerned. The publication or posting of such notices shall be privileged.

In the event of resort to any court from an order of cancellation or suspension in whatever form the proceedings may be brought, it shall in no wise act as a supersedeas of the order of cancellation or suspension. The permit so cancelled or suspended shall so stand pending the termination of the proceedings. No refund or permit fees shall for any reason be made by the Commissioner.

All notices, orders, records and publications authorized or required by the terms of this Act shall be privileged. It is further provided that the certificate of the Commissioner of the Administrator concerning any rule or regulation or other order promulgated under the terms

hereof shall be prima facie evidence of the validity thereof, and the same shall be admissible as evidence in all courts in this State.

Sec. 16. Any permit granted under this Act shall be a purely personal privilege, good for the year in which issued, and ending on August 31st of each year at 12 o'clock midnight, and revocable for the causes herein stated, subject to appeal as hereafter provided, and shall not constitute property, nor shall it be subject to attachment or execution, nor shall it descend by the laws of testate or intestate devolution, but shall cease upon the death of the licensee; provided, that the Commissioner may, by regulation, provide for the time and manner in which the successor in interest of any deceased, insolvent or bankrupt licensee may dispose of any liquors left on hand by the licensee.

Sec. 17. And in the event of any person being aggrieved by any decision, rule or order of the Commissioner, such person shall have the right of an appeal therefrom to the District Court of the county in which a decision, rule or order in such case would become effective, said suit to be against the Commissioner alone as defendant, and such suit shall be tried de novo, and be governed by the same rules as other suits in said court, and during the pendency of such suit the order of the Commissioner may be suspended by interlocutory order of the court pending a hearing on the merits. Such cause shall be tried before the Judge of such court within ten (10) days after the docketing of the cause, or at the earliest possible time after such ten (10) day period, in the event the Judge is not able to try such cause within such ten day period.

Sec. 18. Permits shall be of the following classes: Brewers, distillers, winery, rectifiers, wholesalers, beer and wine wholesalers, package stores, vendors, agents, industrial, medical carriers, private carriers, cartage and storage.

(a) Brewer's Permit. A brewer's permit shall authorize the manufacture and sale of malt beverages containing alcohol not in excess of four per centum (4%) by weight. The annual license fee shall be Two

Thousand (\$2,000.00) Dollars. It shall be unlawful for any person holding a brewer's permit to sell malt beverages to any person who is not the holder of a permit authorizing him to purchase such malt beverages under this Act except when such malt beverages are sold and delivered to persons in other States.

(b) Distiller's Permit. A distiller's permit shall authorize the manufacture of spirituous beverages containing alcohol in excess of four per centum (4%) by weight and the rectification of the same. Such permit shall also authorize the importation into this State of alcoholic spirits including ethyl alcohol for use in or as ingredients in the manufacture of alcoholic spirituous beverages, but for no other purpose, and in no event for resale in this State. It shall be unlawful for any person holding a distiller's permit to sell such spirituous liquors to any one other than the holder of a wholesaler's permit under this Act unless the same be sold and delivered to a person outside this State. The annual license fee for distillers shall be Two Thousand Five Hundred (\$2,500.00) Dollars.

(c) Winery Permits: A winery permit shall authorize the holder thereof to manufacture, wine in this State; said permit shall also authorize the holder thereof to manufacture and import grape brandy to be used exclusively for fortifying purposes by its holder on the premises for which issued. The term "wine" wherever used in this Act shall mean the product obtained by the fermentation of fresh grapes, containing natural sugar or any such product fortified with grape brandy and containing not more than seventeen per cent (17%) of alcohol by weight.

It shall be lawful for any person holding a winery permit to sell wine direct to any other permittee and to the ultimate consumer in unbroken packages. The annual license fee for such winery shall be Fifty (\$50.00) Dollars.

A class "B" winery permit shall authorize the holder thereof to manufacture, bottle, package and label wine where the grapes, used in the manufacture of said wine have been produced solely within the county where such wine is manu-

factured. The annual license fee for such class "B" winery shall be Ten (\$10.00) Dollars.

Nothing in this Act shall be construed to prevent or prohibit the manufacture without a permit or fee of wines by the fermentation of grapes by an individual for his own consumption and where the same is not to be sold or offered for sale.

(d) Rectifier's Permit. For the purpose of this Act "rectifier" means and includes any person who rectifies, purifies, or refines distilled spirits or wines other than vermouth by any process other than as provided for on distillery premises or who mixes such spirits, wine, or other liquors for sale under the name of whiskey, brandy, gin, rum, spirits, cordials, bitters, or any other name. A rectifier's permit shall authorize the rectification and sale of alcoholic spirituous liquors to the holders of wholesale permits only, unless such liquors are sold and delivered to persons outside the State. Such permit the preparation of alcoholic liquors, port into this State alcoholic spirits for exclusive use as ingredients in but shall not authorize the importation of any such spirits for resale without rectification. The annual license fee shall be Two Thousand Five Hundred (\$2,500.00) Dollars.

(e) Wholesaler's Permit. A wholesaler's permit shall authorize the holder to purchase liquor from persons authorized by law to manufacture and sell the same in this State and to import such liquor from points outside the State and to sell the same to the holders of permits in this State at wholesale. Such permit shall also authorize the holder thereof to sell and deliver such liquor to persons outside this State. It shall be unlawful for the holder of such a permit to sell such liquor in this State to any other person than the holder of a permit lawfully entitling him to purchase and receive the same from such wholesaler. Except as is specifically authorized for rectifiers, beer and wine wholesalers and distillers, it shall be unlawful for any other person than the holder of a wholesaler's permit to import liquor into this State. Wholesale druggists possessing the necessary qualifications, as well as other quali-

fied persons, shall be entitled to a wholesaler's permit.

A wholesale druggist is defined to mean every person engaged in the business of selling at wholesale a representative assortment of pharmaceuticals and other materials such as drugs, oils, chemicals, proprietary medicines, and druggist sundries, and who carries a representative stock of such items in such assortments and quantities as will enable him to regularly supply from stock from day to day the usual and immediate medical requirements of retail druggists, pharmacists, physicians, hospitals and dispensaries, and whose gross sales of such items shall at all times exceed his gross sales of liquor for medicinal or other purposes. No wholesale druggist shall be qualified to receive a wholesaler's permit whose business does not meet these requirements. The annual license fee shall be Two Thousand Five Hundred (\$2,500.00) Dollars.

(f) Beer and Wine Wholesaler's Permit. A beer and wine wholesaler's permit shall authorize the holder thereof to purchase malt liquors containing alcohol in excess of four per centum (4%) by weight, and vinous liquors containing alcohol not in excess of seventeen per centum (17%) by weight from brewers and wineries holding permits in this State and to import such liquors from other States and to sell the same at wholesale only to the holders of permits in this State who are authorized to purchase and receive the same, provided that such permit shall also authorize the holder thereof to bottle, package and label wines purchased from wineries or wine manufacturers, either within or without this State. Such permit shall also authorize the holder thereof to sell and deliver such liquor to persons outside this State; provided that such permit may authorize the sale to consumers in unbroken packages in wet areas where such sale is legal. The annual fee shall be Two Hundred and Fifty (\$250.00) Dollars.

(f1) Beer Wholesaler's Permit. A beer wholesaler's permit shall authorize the holder thereof to purchase malt liquors containing alcohol not in excess of four per centum (4%) by weight from brewers holding permits in this State and to im-

port such liquor from other States and to sell the same at wholesale only to the holders of permits in this State who are authorized to purchase and receive the same; such permit shall also authorize the holder thereof to sell and deliver such liquor to persons outside this State; provided that such permit may authorize the sale in unbroken packages to consumers in wet areas where such sale is legal. The annual fee shall be One Hundred and Twenty-five (\$125.00) Dollars.

(f2) Wine Wholesaler's Permit. A wine wholesaler's permit shall authorize the holder thereof to purchase vinous liquors containing alcohol not in excess of seventeen per centum (17%) by weight from wineries or wine manufacturers holding permits in this State and to import such liquors from other States and to sell the same at wholesale only to the holders of permits in this State who are authorized to purchase and receive the same; provided that such permit shall also authorize the holder thereof to bottle, package and label wines purchased from wineries or wine manufacturers either within or without this State; such permit shall also authorize the holder thereof to sell and deliver such liquor to persons outside this State; provided that such permit may authorize the sale in conformity with the provisions of this Act to consumers in wet areas where such sale is legal. The annual fee shall be One Hundred and Twenty-five (\$125.00) Dollars.

(g) Package Store Permit. A package store permit shall authorize the holder thereof to purchase the liquor specified in the permit from the holders of wholesaler's permits. It shall be unlawful for the holder of a package store permit to purchase liquor from any other person than the holders of wholesaler's permits. Such permit shall authorize the holder to sell such liquor as shall be legalized in the area where situated at retail to consumers in unbroken packages only and not for consumption on, at, or near the premises where sold; provided that a hotel as herein defined which has secured a package store permit may deliver liquor at retail in unbroken packages to the rooms of bona fide guests of such hotels for consumption, in such rooms. It shall be un-

lawful for the holder of a package store permit to break or open any package or container containing liquor on, at, or near his premises or to sell, barter, exchange, deliver or give away to any person any drink or drinks of liquor on, at or near his premises from a package or container that has for any reason been opened or broken or to sell liquor in packages containing less than one-half pint. Provided that in the case of wines it shall not be unlawful for the holder of a package store permit to sell the same not for consumption on, at or near the premises where sold in quantities of fifty-two (52) gallons, or less, per sale, and for that purpose may break or open any package, receptacle or container and transfer said wine to another receptacle, package or container of the same or different size.

Provided, further that the vendor in all such cases shall affix to the receiving receptacle, package or container a stamp to be issued by the Commissioner stating that the contents had been withdrawn from a tax-paid container.

Package stores shall not have curtains, hangings, signs or any obstruction which will prevent a clear view at all times of the interior of the store; provided the preceding clause shall not apply to a drug store operating under a medicinal permit only. It shall be unlawful for any holder of a package store permit to employ any person under 21 years of age to sell or dispense liquors.

Hotels and drug stores as herein-after defined, as well as other qualified persons, may obtain package store permits. The annual license fee for a package store permit shall be:

In cities and towns having a population of 5,000 inhabitants or less, according to the last preceding Federal census the fee shall be One Hundred and Fifty (\$150.00) Dollars. In cities and towns having a population of from 5,000 to 25,000 inhabitants, according to the last preceding Federal census the fee shall be Two Hundred and Fifty (\$250.00) Dollars. In cities and towns having a population of from 25,000 to 100,000 inhabitants, according to the last Federal census, the fee shall be Three Hundred and Fifty (\$350.00) Dollars. In cities and towns having

a population of over 100,000 inhabitants, according to the last Federal census, the fee shall be Five Hundred (\$500.00) Dollars. The fee for a package store permit outside of any incorporated city or town shall be One Hundred and Fifty (\$150.00) Dollars.

Provided that the annual license fee for package store permit to sell wines only shall be: In cities and towns having a population of Two Thousand (2,000) inhabitants or less, according to the last preceding Federal census, the fee shall be Ten (\$10.00) Dollars; in cities and towns having a population of more than Two Thousand (2,000) and less than Five Thousand (5,000) inhabitants, according to the last preceding Federal census, the fee shall be Fifteen (\$15.00) Dollars; in cities and towns having a population of more than Five Thousand (5,000) and less than Ten Thousand (10,000) inhabitants, according to the last preceding Federal census, the fee shall be Twenty (\$20.00) Dollars; in cities and towns having a population of more than Ten Thousand (10,000) inhabitants, according to the last Federal census, the fee shall be Twenty-five (\$25.00) Dollars. The fee for a package store permit outside the limits of an incorporated city or town shall be Ten (\$10.00) Dollars.

"Drug store" means and includes every person engaged in the business of selling at retail a representative assortment of pharmaceuticals and other articles and materials such as drugs, oils, chemicals, proprietary medicines and druggist sundries, and who carries regularly a stock of such items sufficient in quantity and assortment as will enable him to supply the daily needs of consumers, and who regularly employ one or more registered pharmacists at all times in compliance with the Pharmacy Laws of this State, and whose gross sales of such items shall at all times exceed the gross sales of liquor for medicinal or other purposes. No drug store shall be granted a permit until a permit to operate a pharmacy has been obtained from the State Board of Pharmacy.

(h) Agent's Permit. No person shall act as agent or salesman for the sale of, or for taking or soliciting orders for the sale of any liquor or beer irrespective of whether such sale is to be made within or without

the State unless such person shall have an agent's permit. In applying for such permit such agent shall set forth the name and address of each and every person whom he represents, and shall furnish such other information as may be required by the Commissioner. It shall be unlawful for any agent to represent any person whose name does not appear upon said permit as his employer or to act as agent or salesman for any other person not named therein. The annual license fee for such permit shall be Five (\$5.00) Dollars.

(i) Industrial Permit. No provision of this Act shall apply to alcohol intended to be used for industrial, mechanical and scientific purposes. Industrial permits may be issued to persons desiring to import, transport and use alcohol for use in the manufacture and sale of any of the following, tax free:

- (1) Denatured alcohol;
- (2) Patent, proprietary, medicinal, pharmaceutical, antiseptic and toilet preparations;
- (3) Flavoring extracts, syrups, and food products;
- (4) Scientific, chemical, mechanical, industrial and medicinal products and purposes.

It shall be unlawful for any person to knowingly sell any of the products enumerated in paragraphs (1), (2), (3), and (4), for beverage purposes or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purpose.

It shall be unlawful for any person to purchase, transport, or use alcohol for any purpose enumerated in this section unless and until he shall have secured an industrial permit; provided, however, that nothing contained in this section shall restrict the purchase, sale or possession without any permit therefor of denatured alcohol by any person after the same has been so produced and so long as it shall retain its character as denatured alcohol. The annual license fee for an industrial permit shall be Ten (\$10.00) Dollars.

(j) Carrier's Permit. The word "carrier" when used in this section shall mean and include steam and electric railway carriers, and common carrier motor carriers operating under the supervision of the Railroad

Commission of Texas and/or the United States Interstate Commerce Commission, whose rates and practices are prescribed by orders promulgated by either of said Commissions. The holder of a carrier's permit shall be authorized to transport liquor into and out of this State and between points within this State. It shall be unlawful for any person to transport liquor into this State or between points within this State unless and until he shall have procured a carrier's permit. In the case of motor carriers as above defined, liquor shall not be transported in this State by the holder of a permit unless a description of the vehicle in which such transportation is carried on shall be furnished, including the engine number, highway license and such other information as may be required. The transportation, or importation of liquor by the holder of a permit in any vehicle not so described shall be unlawful and shall constitute grounds for cancellation of said permit. In the event such carrier's permit shall be cancelled for a violation of this provision or for violation of any rule or regulation promulgated in pursuance hereof, such cancellation shall operate as a bar both as against all of the vehicles owned and operated by such carrier as well as against the holder of such permit for a period of two years. Any steam or electric railway transporting liquor into and out of this State or between points in this State who shall violate any provision of this Act, or who shall violate any rule or regulation prescribed in pursuance of this Act shall have its permit cancelled and in the event of such cancellation shall be prohibited from transporting liquor into this State or between points in this State for a period of two (2) years. The holders of carrier's permits shall furnish such information concerning the transportation of liquor into this State or between points in this State as shall be required of them. It shall be unlawful for any such carrier to transport and deliver liquor to any person in this State unless the same be for a lawful purpose.

The restrictions contained in this section shall not apply to carriers when in the course of an interstate or foreign shipment of liquor it is

necessary for them to cross this State in the course of such transportation.

The annual license fee for a carrier's permit shall be Five (\$5.00) Dollars.

(k) Private Carrier's Permit. Brewers, distillers, wineries, rectifiers, wholesalers, beer and wine wholesaler, distributors, and manufacturers, shall be entitled to transport liquor owned in good faith by them from the place of sale or distribution to the purchaser, upon vehicles owned in good faith by such permittees when such transportation is for a lawful purpose; provided, however, that such permittees shall not be permitted to engage in the business of transporting for hire such liquor in violation of the motor carrier laws of this State, and any such permittee desiring to engage in such business shall first secure a certificate or permit, as the case may be, from the Railroad Commission of Texas under the terms of the motor carrier laws, and shall be required to comply with the provisions of such laws. Motor vehicles used for such transportation shall be fully described in the application for a private carrier permit and such application shall contain all information which shall be required. Motor vehicles used by permittees for the transportation of liquor within this State shall have printed or painted on both sides of said vehicles the trade or business name of the holder of the permit and also the number of the private carrier permit. It shall be unlawful for any permittee above named to transport liquors in any vehicle not fully described in the application for the permit. Any permittee violating any rule or regulation promulgated in pursuance of this section shall have his private carrier permit cancelled and shall not be permitted to transport any liquor in any vehicles owned by him for a period of two (2) years. It shall further be unlawful for any permittee to transport liquor without first having obtained a private carrier permit. The annual license fee for such permit shall be Five (\$5.00) Dollars.

(l) Local Cartage Permit. The Board is hereby authorized to issue Local Cartage Permits to warehouse or transfer companies desiring to transport liquor within the corporate

limits of any city or town and its environs within this State. It shall be unlawful for any person to transport liquor within any city or town or its environs unless and until he shall have secured such permit or to transport the same in violation of the motor carrier laws of this State. In the case of local cartage, liquors shall not be transported by the holder of such Local Cartage Permit unless and until a description of the vehicle or vehicles used in such transportation shall be furnished, including the engine number, date of manufacture, highway license number and such other information as may be required by the Board; and each such vehicle shall be plainly marked or lettered in such manner as to plainly indicate that such vehicle is being used for the transportation of liquors by the holder of a Local Cartage Permit. The transportation of liquor by the holder of a permit in any vehicle not so described and marked shall be unlawful and shall constitute grounds for the cancellation of such permit. In the event such Local Cartage Permit is cancelled for a violation of this provision or for violation of any rule or regulation promulgated in pursuance of this Section, such cancellation shall operate as a bar, both as against all of the vehicles owned and operated by such local cartage permittee, as well as against the holder of such permit for a period of two (2) years. It shall be unlawful for the holder of a Local Cartage Permit to transport liquor between incorporated towns or cities in this State unless and until he shall have fully complied with the requirements of the motor carrier laws of this State governing the issuance of "Carrier" permits. The annual license fee for Local Cartage Permits shall be Five Dollars (\$5.00).

(m) Storage Permit. The holders of brewery, distillery, winery, rectifier, wholesaler and beer and wine wholesaler permits shall be authorized to secure Storage Permits for one or more private warehouses for storage purposes at their place of business for liquors owned by them without being required to pay any additional permit fees. Such permittees shall also be authorized to store liquors owned by them in public bonded warehouses that have secured permits as hereinafter provided.

Each separate warehouse, public or private, used by any permittee for storage purposes shall be separately licensed. No permit shall be granted for the storage of liquor in any dry area except for medicinal or other lawful purposes. When liquors are stored by permittee at any warehouse, public or private, it shall be his duty to report the quantity and character of liquor so stored to the Commissioner. Warehouses, both public and private, shall report to the Commissioner within twenty-four (24) hours any and all withdrawals of liquor from storage, giving the quantity and character of liquor so withdrawn, by whom withdrawn, where and how shipped, together with a statement of the quantity and character of liquor remaining in storage to the credit of the account from which withdrawal was made, it being the intent of this section to provide the Commissioner with a perpetual inventory of liquor stocks in storage at all times. Permittees desiring to store liquors in public or private warehouses shall furnish all information which shall be required and observe all regulations which may be promulgated in pursuance of this section. The annual license fee to be paid by permittees for storage in public warehouses shall be Fifty Dollars (\$50.00) and no liquor shall be stored in other than warehouses which have secured a permit as hereinafter required.

All warehouses, both public and private, desiring to receive and store liquor for permittees shall apply for a permit and shall furnish such information concerning liquor stored and withdrawn from such storage as may be required under any rule or regulation adopted in pursuance of this section. Such warehousemen shall give a surety bond in such amount as may be required of them. The annual license fee for public warehousemen receiving and storing liquor shall be Fifty Dollars (\$50.00) and no permit shall be issued to a public warehouse other than a bona fide bonded warehouse that derives at least fifty per cent (50%) of its gross revenue from the storage and handling household goods or merchandise other than liquors. Annual permits for private warehouses may be issued to holders of brewery, distillery, winery, recti-

fer, wholesaler or beer and wine wholesaler permits for the storage of their own liquors on their own premises without additional fees.

(n) Medicinal Permit. Retail druggists, hospitals, sanitariums and other like businesses and institutions shall be entitled to receive a permit to purchase and sell to qualified persons liquors for medicinal purposes. Medicinal permits shall allow the holders thereof to purchase liquor for medicinal purposes only from persons holding wholesaler's permits under Subsection (e) of this section; it shall be unlawful for the holder of a medicinal permit to purchase liquor from any other persons than the holders of such wholesaler's permits. This section shall apply to wet and dry areas. Such businesses and institutions shall secure permits before handling liquor and no such permit shall be issued for any other than strictly medicinal purposes. Provided that the drug store applying for permit shall have been in operation for a period of two (2) years prior to applying for such permit. Provided nothing contained herein shall prohibit or interfere with bona fide drug stores or pharmacies obtaining a supply of alcohol for the manufacture of medicinal preparations unfit for beverage use, or the compounding of prescriptions in the practice of pharmacy. Nor shall anything contained herein prevent or prohibit bona fide or chartered schools, colleges or universities from obtaining alcohol for scientific or laboratory use. Such businesses and institutions shall keep such records of sales and purchases as may be required by regulations issued in pursuance of this section.

No such liquors shall be dispensed, sold, or delivered to any person in dry areas in this State except upon the prescription of a physician licensed to practice medicine in the State of Texas and who is not addicted to the use of any narcotic drug. Such physician shall not prescribe more than one quart of liquor to any person at any one time. A copy of each prescription issued by a physician shall be preserved by the pharmacist or druggist filling such prescription for a period of two (2) years. Any physician or druggist conspiring with a druggist or phy-

sician for the handling of prescriptions to be used for the dispensing of liquor for beverage purposes shall both be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars and each prescription so issued shall constitute a separate offense. Prescriptions for liquor must be signed by the physician, using his legal signature as he customarily signs it and each prescription must bear the date and name and address of the patient. Prescriptions for liquor must be filled within twenty-four (24) hours after the time of issuance. Such prescription so filled shall be subject to inspection and if any druggist or pharmacist shall sell any liquor without a physician's prescription therefor or for any other purpose than medicinal purposes his permit shall be cancelled and he shall be denied the right to handle liquor for medicinal or any other purpose for a period of (2) years. Any physician who shall prescribe liquor for any other than medicinal purposes shall be denied the right to issue prescriptions for liquor for a period of two (2) years. Physicians desiring to issue prescriptions for liquor for medicinal purposes shall apply for and obtain a permit therefor. It shall be unlawful for a physician to issue a prescription for liquor for medicinal purposes unless and until he shall have obtained such a permit. The annual license fee for physician's permit shall be Five (\$5.00) Dollars. The annual license fee for druggists or pharmacists permits in dry areas shall be Fifty (\$50.00) Dollars; in wet areas the annual license fee for druggists or pharmacists shall be the same as the annual license fees for package stores in such areas.

(o) All license fees levied by this Act shall be paid in advance for one year unless such fee be collected for only a portion of the licensing year. In such event the fee required shall cover the period of time from the date of the license to midnight of August 31st succeeding, and only the proportionate part of the fee levied for such license shall be collected. The fractional part of any month remaining shall be counted as one

month in calculating the fee that shall be due.

(p) All permit fees fixed by this section except agent's, industrial, medicinal, carrier's, private carrier's, local cartage and storage, shall be collected one-half by the State, one-fourth by incorporated cities or towns, and one-fourth by the counties wherein the places of business of said permittees are located. It is intended hereby that the license fees prescribed herein shall be the total fees levied and collected against any permittee and in no event shall a city or town or the Commissioners' Court of any county levy and collect more than one-fourth of the fees herein prescribed for permittees.

(q) Vendors Permits. Vendors permits may be issued to persons operating places where bona fide meals are regularly and customarily served. The holders of vendors permits shall be authorized to sell vinous and malt liquor of the types and of the highest alcoholic content that is legal in the area where the licensed premises are located not in any event to exceed seventeen (17%) per cent alcohol by weight for consumption on the premises where sold.

The holders of vendors permits are prohibited from purchasing liquor from any others than the holders of wholesale and beer and/or wine wholesalers permits. It shall be unlawful for the holder of a wholesaler's or a beer and/or wine wholesaler's permit to sell to the holder of a vendor's permit any type of liquor not included within said permit or which is not permitted to be sold in the area in which the premises of such vendors permittee are located.

It is especially provided that no vendors permit shall be issued in any area authorizing the sale of liquor by the drink of any type or of any alcoholic content that is illegal in such area.

Annual fees for vendors permits shall be Fifty (\$50.00) Dollars.

The annual fee for vendors permits issued to the owners, operators, lessors or lessees of railway dining cars shall be Five (\$5.00) Dollars and a separate fee shall be charged for each car.

(r) No person shall be entitled to hold a package store permit when

he has been issued a permit authorizing sale in broken packages and no person holding a broken package sale permit shall be issued a permit authorizing sale by unbroken packages; provided this restriction shall not apply to hotels where they shall have complied with regulations of the Commissioner regulating the proper segregation of the operation of a package store from operation under a permit authorizing the sale of liquor from broken packages.

Sec. 19. All bonds required by this Act shall be executed by a surety company duly authorized and qualified to do business in this State. No surety may cancel or annul any surety bonds required except with the consent of the Commissioner except provided in Section 22 of this Act. The surety shall have paid and discharged in full all of its liability upon said bond to the State to the date of said cancellation except as provided in Section 22 of this Act. The holders of all permits shall be required to make bonds in sums of not less than \$1,000.00 and not exceeding \$25,000.00. The Commissioner, in his discretion, may fix the amount of bond which shall be required for each class of permittees. All bonds required of permittees shall be payable to the State of Texas conditioned that the applicant will not violate any of the provisions of any of the laws of this State relating to its traffic in, transportation, sale or delivery of liquor or any of the rules or regulations of the Commissioner, and that he will pay all fines, penalties, forfeitures and costs accruing against him, and in the case of such permittees as are required to account for taxes and fees that such permittees will account for and pay all license fees and taxes levied by this Act.

Sec. 20. No person holding a permit under this act that authorizes retail sale of liquor, and no officer, employee or agents thereof, shall acquire or hold or own or possess either in his own name or in the name of any other person, by means of the ownership of corporate stock in a corporation, holding any wholesaler's, brewer's, distiller's, winery rectifier's or beer and/or wine wholesaler's permit, or by means of any participating interest or other inter-

est, or by means of any title or device or trusteeship or otherwise, any financial interest in or to any of said last named permits, or in and to the business thereof, or in and to any company or corporation holding any such permits; nor shall the holders of permits to distill, rectify or manufacture liquor or engage in the business of selling such liquor at wholesale own any such interest in the business or premises of the holder of a permit authorizing the retail sale of liquor. The permit of any person holding a permit authorizing him to sell liquor at retail who shall have any such interest in the business of any such permittees, or who shall knowingly permit any of his officers, employees or agents to so hold the same, shall be subject to cancellation by the Commissioner.

Sec. 21. No person who has not been a citizen of Texas for a period of three years immediately preceding the filing of this application therefor shall be eligible to receive a permit under this Act. No permit shall be issued to a corporation unless the same be incorporated under the laws of the State and unless at least fifty-one per cent (51%) of the stock of the corporation is owned at all times by citizens who have resided within the State for a period of three years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to corporations either domestic or foreign, that were doing business in this State prior to August 24, 1935. Partnerships, firms and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation holding a permit under this Act who shall violate any provision hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file a suit for such cancellation in a district court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's, boat, indus-

trial, medicinal and carrier's permits.

Sec. 22. If any permittee shall be convicted for the violation of any provision of this Act, or any rule or regulation of the Commissioner, and no appeal is pending, his surety shall be liable for any fines or penalties imposed by reason of the conviction, in addition to any taxes or fees levied under this Act which may be due the State at the time the license is revoked, and the Commissioner may, in his own name, institute action upon such bond for the benefit of the State. Upon proof of such conviction the Court before whom such suit is brought shall render judgment in favor of the Commissioner for the total sum of any fines or penalties imposed and any taxes or fees due.

Nothing in this Act shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

The surety may terminate its liability under such bond by giving thirty days' written notice thereof, served either personally or by registered mail to the principal and to the Commissioner; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of thirty days from the date of service of such notice. Unless on or before the expiration of such period the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the permit of the principal shall likewise terminate upon the expiration of such period.

Sec. 23. All persons having any liquor on hand in this State, shall, within thirty (30) days from the effective date of this Act, make a true inventory and report of such liquor to the Commissioner and shall pay the taxes herein levied and assessed. Failure to report and pay the taxes on any such liquor shall render the same subject to confiscation by the Commissioner as is herein provided, and shall operate as a bar to such person receiving any character of permit under this Act.

Sec. 24. There is hereby levied and imposed in addition to the other

fees and taxes levied by this Act, the following:

(a) A tax of eighty cents (80¢) per gallon on each gallon of spirituous alcoholic liquor containing more than twenty-four (24%) per cent alcohol by volume, sold or offered for sale in this State except denatured and industrial alcohol.

(b) A tax of thirty cents (30¢) per gallon on each gallon of spirituous alcoholic liquor containing not more than twenty-four (24%) per cent alcohol by volume, sold or offered for sale in this State.

(c) A tax of two (2¢) cents on each gallon of still wine that does not contain over fourteen (14%) per cent of alcohol by volume, sold or offered for sale in this State.

(d) A tax of eight (8¢) cents on each gallon of still wine containing more than fourteen (14%) per cent and not over twenty-four (24%) per cent of alcohol by volume, sold or offered for sale in this State.

(e) A tax of fifty (50¢) cents on each gallon of still wine containing alcohol in excess of twenty-four (24%) per cent by volume, sold or offered for sale in this State.

(f) A tax of twenty-five (25¢) cents on each gallon of natural sparkling wines sold or offered for sale in this State.

(g) A tax of twenty-five (25¢) cents on each gallon of artificially carbonated wine sold or offered for sale in this State.

(h) A tax of fifteen (15¢) cents on each gallon of malt liquor containing alcohol in excess of four (4%) per cent by weight sold or offered for sale in this State.

The tax herein levied shall be paid by affixing stamps on each bottle or container of liquor. Said stamps shall be affixed in strict accordance with all rules and regulations promulgated in pursuance of this Act. It shall be the duty of the holders of wholesaler's, beer and/or wine wholesalers and winery permits to affix said stamps on each bottle or container of liquor and to cancel the same by writing or printing thereon his name except as otherwise herein provided. In the case of wines the stamp shall be affixed to the original container and no further stamps shall be required if a portion or the whole of said contents of said original container be removed for

resale as provided for in this Act. In case any bottle containing liquor be enclosed in a sealed metal container the affixing and cancellation of said stamps may be governed by rules and regulations promulgated hereunder that may allow for the affixing of said stamps to such metal container; provided that when stamps have been once affixed, as provided in this Act, no other or further stamps shall be required, regardless of how often such liquor may be sold or resold within the State; provided further that the stamps shall be affixed in such manner that their removal will require continued application of steam or water. Every holder of a wholesaler's permit shall, upon receipt of a shipment of liquor for sale within this State, under the provisions of this Act, within twenty-four (24) hours after receiving the same and before it is offered for sale, prepare a true invoice thereof and give such other information in respect thereto as may be required by rules and regulations. Any holder of a wholesaler's permit, a distiller's permit, rectifier's permit, beer and/or wine wholesaler's permit or a brewer's permit, having in possession any liquor intended for shipment to any place without the State, shall keep such liquors in a separate compartment from that of liquors intended for sale within the State so that the same may be easily inspected and shall attach to each such package of liquor so intended for shipment without the State a stamp of the kind and character that shall be required by proper rule or regulation denoting that the same is not intended for sale within the State. When such liquors are so kept and so stamped no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of the sum of twenty-five (25¢) cents shall be made for every such stamp. All such permittees authorized to transport liquor beyond the boundaries of this State shall furnish duplicate copies of all invoices for the sale of such liquors within twenty-four (24) hours after such liquors have been removed from their places of business.

Sec. 25. Whenever any of the persons licensed under this Act fail to account for any taxes or license fees levied herein, or defaults in any

of the conditions of his bond, or fails or refuses to pay the Commissioner any obligation or liability, forfeiture or penalty imposed upon him by this Act, the Commissioner shall report the same to the Attorney General who shall immediately institute the necessary action in a District Court of Travis County, Texas, and the county and district attorneys of the various counties of the State shall likewise assist the Commissioner in the performance of this duty.

Sec. 26. Whenever the term "dry area" is used in this Act, it shall mean and refer to all counties, justice precincts, incorporated cities or towns wherein the sale of intoxicating liquors had been prohibited by valid local option elections held under the laws of the State in force at the time of the taking effect of Section 20, Article XVI, Constitution of Texas, in the year 1919. It likewise shall mean and refer to any such area where such sale shall be prohibited under the terms of this Act.

The term "wet area" shall mean and refer to all counties, justice precincts, incorporated cities or towns where the sale of intoxicating liquors had not been prohibited by local option elections held under the laws of the State and in force at the time of the taking effect of Section 20, Article XVI, Constitution of Texas, in the year 1919. "Wet area" shall likewise mean and refer to any such area as shall be local option election vote to legalize the sale of intoxicating liquors.

Neither the term "wet area" nor "dry area" shall in any wise modify the status of counties or their political subdivisions that have held or shall hereafter hold local option elections under the provisions of Chapter 116, Acts of the Regular Session of the Forty-third Legislature.

The word "person" or "persons", whenever used in this Act, shall be held and construed to mean and include persons, firms and corporations and all associations of natural persons, incorporated or unincorporated, whether acting by themselves or by a servant, agent or employee.

The courts of this State shall take judicial knowledge of the status of wet and dry areas as herein defined in any criminal prosecution insti-

tuted, either by complaint, information or indictment.

Sec. 27. It shall be unlawful for any person to sell or offer for sale in this State any alcoholic liquors under the name or brand of "whiskey," or that has printed or otherwise labeled upon the bottle or container containing such alcoholic liquor the term "whiskey," unless such alcoholic liquor be an alcoholic distillate from fermented mash of grain or be a combination, mixture or blend of such distillates from fermented grains, to which there has been added neither alcoholic nor other spirits distilled from material other than grain. This section shall not apply to foreign types of whiskey that were manufactured in and in compliance with the laws of foreign countries.

Sec. 28. In any city where the sale of liquor as herein defined is prohibited by its charter from being sold in its residence section, or any part thereof, such charter amendment shall remain valid and continue effective until such time as said charter provisions may be repealed or amended as provided by law.

Sec. 29. No sale or delivery of liquor shall be made on or from the premises of the holder of any permit (except upon the prescription of a duly licensed physician);

(a) Between midnight and seven o'clock A. M. on any day;

(b) On any day on which any primary or general election is being held either State or National, in the District in which the permittee is located;

(c) On any day on which an election either county or municipal is held in the municipality in which the permittee is located;

(d) On Sundays;

(e) No liquor shall be sold at any time within three hundred (300) feet of any church or school.

Sec. 30. It shall be unlawful for the holder of any permit selling liquor at retail to employ in his place of business any person under the age of twenty-one years to sell, deliver or otherwise handle liquor. It shall further be unlawful for any person to knowingly sell, deliver or give away any liquor to any person under the age of twenty-one years, or to any person who is visibly intoxicated, or to any person known to

be an habitual drunkard or to any insane person.

Sec. 31. No person shall transport into this State or between points in this State upon any public highway any liquor unless the person accompanying and in charge of such shipment shall have present and available for exhibition such bills of lading, evidence of ownership, or shipment, as the Commissioner may, by rules and regulations require, and no person shall refuse to exhibit or permit to be read or examined any such bill of lading, evidence of ownership, or shipment, by any agent or employee or deputy of the Commissioner or any peace officer of this State.

Sec. 32. If any person shall forge or counterfeit or cause or permit to be forged or counterfeited any stamp, die, plate, official signature, certificate, evidence of tax payment, permit, license or other instrument, or any part of any stamp, die, plate, official signature, certificate, evidence of tax payment, permit, license or other instrument, which has been provided for in this Act or which shall hereafter be provided for, or shall knowingly utter, use or pass the same, he shall be deemed guilty of a felony and shall be punished by confinement in the State penitentiary for any term of years not less than one or more than five.

Sec. 33. (a) Any room, house, building, boat, vehicle, structure or place where intoxicating liquor is manufactured, sold, kept or bartered in violation of the laws of this State and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not less than One Hundred (\$100.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, or by imprisonment in the county jail for not more than one year. Any person who is twice convicted under the provisions of this section shall for the second and all subsequent offenses be punished by fine of not less than One Hundred (\$100.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars and by confinement in the county jail for not less than thirty

days nor more than one year. If a person has knowledge or reason to believe that his room, house, building, boat, vehicle, structure or place is occupied or used for the manufacture or sale of liquor contrary to the provisions of the laws of this State and suffers the same to be so occupied or used, such room, house, building, boat, vehicle, structure or place shall be subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of such nuisance for such violation and any such lien may be enforced by action in any court having jurisdiction.

All intoxicating liquors kept or stored in this State upon which any lawful tax to the State has not been paid for the purpose of this section shall be deemed to be kept in violation of the laws of this State.

(b) If a person shall have in his possession within this State any distilled liquors not contained in a container to which is affixed a stamp or other valid evidence showing the payment of the tax on such whiskey due to the State of Texas, he shall be guilty of a misdemeanor and upon conviction shall be fined not less than Ten (\$10.00) Dollars, nor more than Five Hundred (\$500.00) Dollars, or be confined in the county jail not more than six months, or both.

(c) When any sheriff or deputy sheriff or constable or deputy constable, or any police officer, or any other State or local officer charged with the duty of enforcing the criminal laws of this State shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air-craft, water craft or any other conveyance and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested, and against all persons, firms and corporations directly or knowingly permitting such use of such vehicle, under the provi-

sions of law in any court having competent jurisdiction; but said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide judgment of the Court. The court upon the conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order the sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, and by intervention or otherwise at said hearing or in other proceedings brought for said purpose, as being bona fide and as having been created without the lien or having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor and shall pay the balance of the proceeds into the Treasury of the State to the credit of the General Revenue Fund. All liens against property sold under this section shall be transferred from the property to the proceeds of its sale. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same with a description thereof, shall be advertised in some newspaper published in such city or county where taken, or if there be no newspaper published in such city or county, any newspaper having circulation in the county, once a week for two weeks and by hand bills posted in three public places near the places of seizure, and if no claimant shall appear within ten days after the publication of the advertisement the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the State for the benefit of the General Revenue Fund.

All liquors illegally transported in this State upon which any lawful tax due to the State has not been paid, for the purposes of this sec-

tion, shall be deemed to be transported contrary to law.

No officer making an arrest under this section shall be entitled to assess, collect or receive a fee for making such arrest unless the defendant is convicted in a contested trial.

Sec. 34. That any liquor found in the possession of any one in this State not having affixed to the bottle or container the stamps required by this Act, except in the case of wines if satisfactory proof be given that the same has been withdrawn from a tax-paid container, or unless it has affixed to the bottle, or container a stamp stating that the same has been withdrawn from a tax-paid container, (the Commissioner shall promulgate regulations for the affixing of such stamps) is hereby declared to be contraband and the same may be seized by the Commissioner or by any of his agents or employees, or by any peace officer, without warrant, and the sheriff of the county in which such seizure is made shall take possession of said liquor so seized for sale at public auction to the highest bidder after due advertisement for a period of ten (10) days, but no sale shall be made to any person other than the holder of a wholesaler's or package store permit, and the sheriff, before the delivery of any liquor so seized to any purchaser, shall require the purchaser to affix the proper amount of stamps to the individual containers as herein provided. Any other confiscation of liquor authorized by the provisions of this Act shall be handled in a like manner. The costs of confiscation and sale shall be paid out of the proceeds derived from such sale. After the costs of such sale have been paid any balance remaining shall be remitted to the Commissioner. It is further provided that any liquor transported in violation of any provision of this Act shall be subject to confiscation and the same shall be sold in the manner herein provided. It is further provided that no liquor of questionable purity and content shall be sold at public auction, but the same shall be destroyed by any officer so seizing the same upon an order of the District Court of the county where the same was seized if such court be of the opinion that such liquor should, for such reason, be destroyed. It is

further provided that no liquor sold at public auction as herein provided shall be delivered within a period of five (5) days after such sale, during which time the Commissioner may, in his discretion, reject any bids and order the liquor resold until a satisfactory bid is had.

Sec. 35. It shall be the duty of all peace officers of this State, including city, county and State, to enforce all provisions of this Act and to assist the Commissioner in detecting violations of this Act and apprehending offenders and of county courts, in case of violations to make recommendations to the Commissioner for revocation of permits. Whenever any officer shall arrest any person for violation of this Act, he shall take into his possession all liquor which the person so arrested has in his possession, or on his premises, which is apparently being used in violation of this Act. In the event the person so arrested is convicted finally, and it is found that the said liquor has been used in violation of this Act, the same shall be forfeited to the Commissioner and shall be delivered by the court or officer to him to be disposed of as herein provided.

Sec. 36. The Commissioners' Court of each county in the State, whenever they deem it expedient, may order an election to be held by the qualified voters in said county or of any justice precinct, incorporated city or town, to determine whether or not the sale of liquors of the various types and alcoholic contents herein defined shall be prohibited or legalized in such county, justice precinct, incorporated town or city; provided it shall be the duty of said court to order the election as aforesaid whether petitioned to do or of said political subdivision, take so by as many as ten per cent (10%) of the qualified voters of said county, ing the votes for Governor at the last preceding general election as the basis for determining the qualified voters in any such county or political subdivision. After the first local option election held as provided in this Act, in any county, justice precinct, incorporated town or city no subsequent election upon the same issue in the same county, justice precinct, incorporated city or town shall be held for the purpose of de-

termining whether or not such liquor shall be legalized or prohibited earlier than one (1) year from the date of the preceding local option election in said county or said political subdivision of said county.

Sec. 37. When the Commissioners' Court, of their own motion or upon the petition provided for, shall order an election as herein provided for, it shall be the duty of said court to order such election to be held at the voting places within such subdivision or county upon a day not less than ten (10) nor more than twenty (20) days from the date of said order, and the order thus made shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity or to clothe the court with jurisdiction to make it valid, have been duly complied with, provided that said court shall appoint such officers to hold such elections as is now required by law for general elections.

Sec. 38. The Clerk of said court shall post or cause to be posted at least one copy of said order in each election precinct in such political subdivision or county affected, for at least six (6) days prior to the day of election, which election shall be held and the return thereof made in conformity with the provisions of the General Laws of the State, and by the election officers appointed and qualified under such laws.

Sec. 39. (a) At said election the vote shall be by official ballot which shall have printed or written at the top thereof in plain letters the words "Official Ballot". Said ballot shall have also written or printed thereon the issue or issues in words and figures prescribed by Section 44 of this Act, which shall be submitted by the order of the Commissioners Court and the Clerk of the County Court shall furnish the presiding officer of each voting box with a number of such ballots to be not less than twice the number of qualified voters at such voting box and the presiding officer of each voting box shall write his name on the back of each ballot before delivering same to the voter and each person offering to vote at such election shall, at the time he offers to vote, be furnished by such presiding officer with one such ballot and no voter shall be permitted to depart with such

ballot and shall not be assisted in voting by any person except by such presiding officer or by some officer assisting in the holding of such election under the discretion of such presiding officer when requested to do so by such voter.

(b) Those who favor the sale of liquor of the type or types and alcoholic contents that may be submitted at any such election shall erase the word "Against", and the words following, by making a pencil mark through same, and those who oppose it shall erase the word "For" and the words following, by making a pencil mark through same. No ballot shall be received or counted by the officers of such election that is not an official ballot and that has not the name of the presiding officer of such election written thereon in the handwriting of such presiding officer as provided by this Act.

(c) The Commissioners Court of each county in the State, whenever they deem it expedient, may order an election to be held by the qualified voters of any area which constituted a justice precinct, incorporated city or town, which had voted to prohibit the sale of intoxicating liquors within the boundaries of said area under any local option law in force prior to the adoption of Section 20 of Article XVI of the Constitution as the same was amended in 1919, for the purpose of determining whether or not the sale of liquor of the various types and alcoholic contents herein defined shall be legalized within said area when as many as of said court to order an election within said area when as many as fifty qualified voters of said area shall so petition said court; said election shall be held in conformity with the provisions of this Act, and the Commissioners Court shall designate the officers of election and places of election within said area; the order of election shall describe said area by metes and bounds. In the event any such area shall vote to legalize the sale of liquors within the boundaries of said area shall thereafter be governed by the laws pertaining to the sale of intoxicating liquors within the city, town, justice precinct or county in which that area is located.

Sec. 40. The officers holding such election shall, in all respects not

herein specified, conform to the General Election Laws in force regulating elections and after the polls are closed proceed to count the votes and within three (3) days thereafter make due report of said election to the aforesaid court. The provisions of the General Election Laws shall be followed in calling and conducting said election where not inconsistent herewith.

Sec. 41. Said court shall hold a special session on the fifth day after the holding of said election, or as soon thereafter as practicable, for the purpose of canvassing the votes and certifying the results, and if a majority of the votes are against the sale of liquor of any type or types and alcoholic contents submitted on said ballot said court shall immediately make an order declaring the results of said vote, and absolutely prohibiting the sale thereof within the said political subdivision after thirty (30) days from the date of declaring the results thereof, and thereafter until such time as the qualified voters therein may thereafter at a legal election held for such purpose by a majority vote decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes, and declaring the results thereof.

Sec. 42. The order of said court declaring the result and prohibiting the sale of any liquor shall be published by the posting of said order at three (3) public places within the county or the political subdivision in which the election was held, which fact shall be entered by the County Judge on the minutes of the Commissioners' Court. An entry thus made or a copy thereof certified under the hand and seal of the Clerk of the Court shall be prima facie evidence of such posting.

Sec. 43. If a majority voting at such election vote for the sale of liquor of any type or types and alcoholic contents the Court shall make an order declaring the results and have the same entered of record in the office of the Clerk of said Court, whereupon it shall be lawful in such political subdivision to manufacture, sell and distribute, such liquor in

accordance with the terms of this Act until such time as the qualified voters therein may thereafter, at a legal election held for that purpose by a majority vote, decide otherwise, and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes and declaring the results thereof. It shall be the duty of the County Clerk, within three (3) days after the results of any such election have been declared to certify such results to the Secretary of State at Austin.

Sec. 44. The Commissioners' Court shall have the power upon its own motion or upon petition as herein provided to order local option elections for the purpose of determining whether liquor of the various types and alcoholic contents herein provided shall be legalized or prohibited.

In any area where a petition requests or the Commissioners' Court desires to submit the question of increasing the alcoholic content or liquors authorized to be sold therein on one or more of the following issues may be submitted:

(a) "For legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of 4% by weight" and "against legalizing the sale of vinous and malt liquors that do not contain alcohol in excess of 4% by weight."

(b) "For legalizing the sale of all liquors" and "Against legalizing the sale of all liquors."

In any area where it is desired to decrease the alcoholic content of liquors authorized to be sold therein the following issues may be submitted:

(a) "For prohibiting the sale of vinous and malt liquors that contain alcohol in excess of 4% by weight" and "Against prohibiting the sale of vinous and malt liquors that contain alcohol in excess of 4% by weight."

(b) "For prohibiting the sale of all liquors", and "Against prohibiting the sale of all liquors."

The Commissioners' Court shall have power to submit any one or more issues upon the same ballot at the same election.

Sec. 45. Any person who shall violate any of the provisions of this Act or any rule or regulation of the

Commissioner shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not less than Fifty (\$50.00) Dollars, nor more than Five Hundred (\$500.00) Dollars or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment, and for the second or subsequent violation such person upon conviction shall be punished by a fine of not less than Two Hundred (\$200.00) Dollars and not more than One Thousand (\$1,000.00) Dollars or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

The possession of a license to sell spirituous, vinous and malt liquors issued by the Government of the United States shall be prima facie evidence that such person, when found in possession of such license, is engaged in the business of selling such liquors.

Sec. 46. The Commissioner shall prescribe, have prepared and furnish, stamps of such denominations and quantities as may be necessary for the payment of the tax imposed and assessed by this Act. He shall likewise prepare and have printed from time to time all forms necessary to perform his duties.

Sec. 47. For the purpose of enabling the Commissioner to immediately begin the performance of his duties, there is hereby appropriated out of any money in the General Revenue Fund of the State, not otherwise appropriated, the sum of Twenty-five Thousand (\$25,000.00) Dollars and said sum shall be immediately available. It is hereby declared to be the legislative intent that no further appropriation shall be made out of the General Revenue Fund to the Commissioner but that the expenses of operation shall be paid out of the funds collected from fees and taxes imposed by this Act. The Commissioner is hereby authorized to set up a revolving fund in the sum of Fifty Thousand (\$50,000) Dollars to be maintained at all times out of revenues derived under the provisions of this Act. Said fund shall be used by the Commissioner for the payment of salaries and other expenses necessary in performing his duties and the same is hereby appropriated.

Sec. 48. The Commissioner is hereby authorized to cause to be printed immediately ten thousand (10,000) copies of this Act in pamphlet form for distribution, and as many additional copies as may be required. He shall cause the same to be distributed to all district and county attorneys in this State, to the several district judges of the State, to the county judge of the various counties, and to such other officers and persons in this State as he may deem necessary. The expense of printing such copies shall be paid out of the fees and taxes herein levied and assessed.

Sec. 49. Chapter 7 of Title 11, Penal Code of Texas of 1925, and all amendments thereto are hereby expressly repealed. Title 80, Revised Civil Statutes, 1925, and all amendments thereto are hereby expressly repealed.

Sec. 50. Subject to the requirement that local option elections permitting the manufacture, sale and distribution of vinous and malt beverages containing not to exceed 4% alcohol by weight as hereinafter authorized shall be held in accordance with and pursuant to the provisions of Sections 36 to 44 inclusive of this Act; and provided further that beer shall not be sold in any city, county or political subdivision thereof of this State except in cities, counties or political subdivisions that had not adopted prohibition by local option election held under the laws of the State of Texas and in force at the time of taking effect of Section 20, Article 16, of the Constitution of Texas in 1919, unless and until such city, county or political subdivision shall have a local option election in accordance with the said Sections 36 to 44 inclusive of this Act; and provided further that the provisions of this Section shall not be construed to prohibit the sale of beer in cities, counties or subdivisions thereof in which the qualified voters have voted to legalize such sale under the provisions of Chapter 116, Acts of the Regular Session, Forty-third Legislature, Chapter 116, Acts of the Regular Session Forty-third Legislature is hereby re-enacted and so amended that it shall hereafter read as follows:

Sec. 51. (a) The manufacture, sale and distribution of vinous or malt

beverage containing one-half ($\frac{1}{2}$) of one per cent (1%) or more of alcohol by volume and no more than four per centum (4%) of alcohol by weight is hereby authorized within the State of Texas, subject to the terms and conditions herein imposed.

(b) It shall continue to be unlawful to manufacture, sell, or barter, or exchange in any city, county or political subdivision thereof, any vinous or malt liquors containing in excess of one-half ($\frac{1}{2}$) of one per cent (1%) alcohol by volume except in cities, counties, or political subdivisions that had not adopted prohibition by local option election held under the laws of the State of Texas and in force at the time of taking effect of Section 20, Article 16, of the Constitution of Texas in 1919; except that in cities, counties or political subdivisions which have voted to legalize the sale of beer in accordance with the local option provisions of Chapter 116, Acts of the Regular Session of the Forty-third Legislature, such beer may continue to be sold lawfully. It is expressly provided, however, that any city, county or political subdivision may vote in accordance with and pursuant to the provisions of Sections 36 to 44 inclusive of the Texas Liquor Control Act to permit or prohibit the manufacture, sale and distribution of vinous and malt beverages containing not to exceed 4% alcohol by weight.

(c) The word "beer" as hereinafter used in this Act and for the purposes of this Act shall mean beer containing one-half ($\frac{1}{2}$) of one per cent (10%) or more of alcohol by volume and not more than four per centum (4%) of alcohol by weight.

Sec. 52. (a) Beer can be manufactured, sold and distributed in barrels, kegs, bottles and other containers.

(b) As a standard of measure the word "barrel" shall mean a container containing thirty-one (31) standard gallons.

Sec. 53. (a) A "manufacturer" is hereby defined to be any person licensed to manufacture or brew beer and to distribute and sell the same to others in the original package.

(b) A "general distributor" is hereby defined to be any person licensed to distribute or to sell beer to local distributors, retail dealers

and/or others in the original package.

(c) A "local distributor" is hereby defined to be any person licensed to sell and distribute beer to retail dealers and ultimate customers in the county of his residence in unbroken packages not to be consumed on the premises where sold.

(d) A "retail dealer" is hereby defined to be any person licensed to sell beer in bottles and from kegs, barrels or other containers to the ultimate consumer.

(e) A "general distributor" shall procure the primary license in the county of his domicile or residence, and if he desires to establish any place of business in any other county, he shall present his license secured from the county of his residence to the Tax Collector of such County together with a license fee of Fifty Dollars (\$50.00) and it shall be the duty forthwith of such Tax Collector to issue a license for such general distributor in such county.

(f) A distributor, local or general, may maintain necessary warehouses, for storage purposes only, from which delivery may be made without such warehouses being licensed.

(g) "Person" shall include any corporation, partnership, association and person or group of persons.

Sec. 54. It shall be unlawful for any person to manufacture or brew for the purpose of sale or to sell or distribute any beer without first having applied for and secured a license as required by this Act.

Sec. 55. Before any license required by this Act shall be issued the license fee required therefor shall be paid to the County Tax Collector of the county where such license is issued for the use and benefit of the General Fund of the State of Texas. Annual fees required for license authorized by this Act shall be as follows:

(a) For a license authorizing the manufacture and sale by a manufacturer, \$500.00.

(b) For a general distributor, \$200.00.

(c) For a local distributor, \$50.00.

(d) For a license authorizing the sale of beer by retail dealer for consumption on or off the premises where sold, \$50.00.

(e) For license authorizing the sale of beer by retail dealer in the

original container direct to the consumer, but not for resale, and not to be consumed on the premises where sold, \$20.00.

(f) All licenses issued under the terms of this Act shall terminate at midnight on the thirty-first day of December of each year and no license shall be issued for a longer term than one year. On or before the first day of January 1936 and annually thereafter each and every person owning a license issued under the terms of this Act may by written application filed with the Tax Collector of the county of his residence, not more than thirty (30) days prior to the first day of January, renew such license so held by him. Such applications shall be in writing, signed by the applicant and contain full and complete information as to the business to be conducted and all other information as set out and required in the original application upon which such original license was issued, accompanied by a fee of Two (\$2.00) Dollars, which said sum of Two (\$2.00) Dollars shall be in addition to the amounts in this Act required to be paid for annual licenses, as a renewal fee charge. Such sums so paid as renewal fee charges shall be retained by the respectively County Tax Collectors as fees of office and be so accounted for by them respectively. Upon the presentation of such application for renewal of license, together with the sums required by this Act for an annual license, plus the said renewal fee of Two (\$2.00) Dollars, it shall be the duty of the County Collector to forthwith issue such renewal license upon the form to be prescribed by the Commissioner; provided, however, that no applicant for a license under the terms of this Act shall be required to pay at any one time more than the annual fees required for licenses hereunder; but such applicant shall always be required to pay such fees in advance and if such license so sought is for a portion of a year only, then the fee required to be paid for the issuance of such license shall cover the period of time from the date of such license to midnight of the thirty-first day of December following, and only such proportionate part of such annual license fee as required under the terms of this Act as the period of

time between the date of such license and the thirty-first day of December following bears to the calendar year shall be required to be paid by such applicant.

(g) No manufacturer, general distributor, local distributor or retail dealer shall carry on such business at more than one place under the same license, but a separate license must be obtained for each place of business, nor shall any such license be voluntarily assigned more than once, but before assignee of such license can engage in business thereunder he or they shall comply with the provisions of this Act as required by original licensee and provided further that the sale of such license, whether in the name of the original licensee or assignee, may be made under execution or mortgage and the purchaser of such license in such sale shall have the right to surrender such license to the State or County which issued the tax receipt which is the basis thereof and shall receive therefor pro rata unearned portion of such license provided that should said original licensee or his assignee desire to change the place designated in said license he may do so by applying to the County Judge as in the case of the original application for license as provided in this Act.

(h) The Commissioners Court of each County in this State shall have the power to levy and collect from every person that may be licensed hereunder in said county a license fee equal to one-half ($\frac{1}{2}$) of the State fee; and where any such license fee is assessed in any incorporated city or town, said city or town shall have the power to levy and collect a license fee not to exceed one-half ($\frac{1}{2}$) of the State fee, but no other fee or tax shall be levied by either. But nothing shall be construed as preventing the levying, assessing, and collecting general ad valorem taxes on the property of the said persons, individuals, partnerships or corporations so licensed.

(i) Every license issued prior to the effective date hereof to any manufacturer, general distributor, local distributor or retail dealer, shall remain in force for the period of time that it would have been in force without the passage of this Act, provided, however, that the power and authority heretofore granted to

the State Comptroller for the enforcement of Chapter 116, and the duties imposed upon him are hereby transferred to the Division of Liquor Control herein created; and provided that the schedule of license fees provided in sub-sections (d) and (e) of this Section 5 shall not be effective until January 1, 1936.

Sec. 56. (a) There is hereby levied and assessed a tax at the rate of One Dollar and Fifty Cents (\$1.50) per barrel on all beer sold, stored or distributed in this State or imported into this State. On imported beer the duty of paying said tax and affixing and cancelling the tax stamp as required under this Act shall rest primarily on the importer, and it is hereby declared to be unlawful to import beer into this State unless said tax has first been paid and the tax stamp evidencing such payment has been first affixed and cancelled as required by this Act.

It is the intention of this Section to impose upon all persons importing beer into this State the duty of paying said tax and affixing said stamp as required by this Act before said beer is imported into the State. Provided, however, if it should be determined that this sub-section imposes an undue burden on interstate commerce and for that reason is invalid, then, it is hereby declared to be the legislative intent, nevertheless, to levy and collect the tax at the rate herein prescribed upon all beer sold, stored or distributed in this State, or imported into this State, and the duty of paying this tax shall rest upon the first person selling, storing or distributing said beer in this State; provided, further, however, that the tax herein prescribed shall be paid but one time.

No manufacturer, however, shall be required to affix any stamps on any container of beer to be transported out of this State while same is stored in any brewery where same is brewed.

It shall be unlawful to transport to destinations in this State any beer upon which said tax has not been paid.

(b) Said tax shall be paid and evidenced by placing stamps as hereafter provided in the denomination required on each original barrel, keg, box, carton or other container in

which beer in bulk or in bottles is packed; provided, however, that such container shall not contain more than the content of one (1) barrel of beer; and provided further that at the time such stamp is affixed the person affixing the same shall by indelible ink or stamp cancel said revenue stamp by placing the date of his or its full name or initials on said revenue stamp.

(c) Provided further that if at the time said beer is received in this State, said stamps as required by this Act, have already been affixed and/or dated and initialed, the person receiving the same shall be relieved therefrom, but he shall not be relieved from dating or initialing the same if no initial or date appears on said stamp upon receipt of said beer.

(d) Said stamp shall be placed on each barrel, keg, carton, box or other container upon which the stamp is required to be affixed in such way that such container cannot be conveniently and practically opened without mutilating or defacing said stamp. Every person opening any such container upon which a stamp has been placed shall at the time mutilate or otherwise deface such stamp so that the same cannot be used again.

(e) No bottled beer shall be stored in this State unless the same be in a container, unless the same is exposed for sale or is being cooled for sale, except when the same is legally in the possession of the ultimate consumer; nor shall any beer be stored or sold in this State except to the ultimate consumer, unless the same is packaged or contained in a container properly stamped.

(f) If any person has paid the tax on any container of beer by affixing stamps thereon, and thereafter said beer is shipped out of Texas for consumption, a claim for refund may be made on paying a fee of five dollars (\$5.00) to the Commissioner at the time and in the manner prescribed by him. So much of said fund as may be necessary not to exceed two per centum (2%) thereof is hereby appropriated for such purpose. Said officer may promulgate rules and regulations generally for the enforcement of this Act.

Sec. 57. It is the purpose and intent of this Act to require the tax to

be paid and the stamp evidencing the same to be affixed on the first sale, distribution, storage or transportation and at the source, to the end that it will preclude any person evading the payment of this tax, and so as to relieve as nearly as possible the consumer and retail dealer from having to affix said stamps.

Sec. 58. (a) It shall be the duty of the State Treasurer to have engraved or printed the stamps necessary to comply with this Act and to sell same to all persons upon demand and payment therefor, and one-half ($\frac{1}{2}$) of the proceeds of such sale shall be placed to the credit of the State Available School Fund and one-half ($\frac{1}{2}$) to the General Fund, and the State Treasurer shall be responsible for the custody and sale of such stamps and for the proceeds of such sales under his official bonds. Such stamps shall be of such design and denomination as the State Treasurer shall from time to time prescribe and shall state the amount of tax, the payment of which is evidenced thereby, and shall contain the words "Texas State Tax Paid."

(b) All appropriations of monies authorized by the Forty-fourth Legislature, Regular Session, 1935, for enforcement of the provisions of Chapter 116, Acts Regular Session, Forty-third Legislature, by the Comptroller of Public Accounts, are hereby transferred and made available for expenditure by the commissioner in the enforcement of this chapter as amended.

Sec. 59. (1) It shall be unlawful for any manufacturer or distributor directly or indirectly or through a subsidiary or affiliate, any agent or any employee, or by any officer, director, or firm member:

(a) To own any interest in the business of any retail dealer in beer, or own any interest of any kind in the premises in which any such retail dealer conducts his or its business.

(b) To hold (after the expiration of any existing licenses) the ownership or any interest in any license to sell brewery products for consumption on the premises covered by such license, except the license of manufacturers to dispense their own products on the brewery premises.

(c) To furnish, give or lend any

money or other thing of value, or to extend unusual credit terms, to any person engaged in selling brewery products for consumption on the premises where sold, or to any person for the use, benefit or relief of said person engaged in selling as above or to guarantee the repayment of any loan or the fulfillment of any financial obligation of any person engaged in selling as above. The extension of credit for longer period of time than is generally extended to regular customers of a manufacturer or distributor covering the purchase of brewery products from such manufacturer or distributor shall be deemed unusual credit terms.

(d) To make or enter into any agreement or contract, the effect of which will amount to the shipment or delivery of brewery products on consignment. "Consignment," as here used, means the delivery of products under an arrangement whereby the person receiving such products has the right at any time prior to sale to relinquish possession to or return them to the shipper, and whereby the title to such products remains in the shipper.

(e) To furnish, give, rent, lend or sell any equipment, fixtures or supplies to any person engaged in selling brewery products for consumption on the premises where sold. This subsection does not apply to such equipment, fixtures or supplies furnished, given, loaned, rented or sold prior to the effective date of this Act, except that such transactions made prior to this date are not to be used as a consideration for an agreement thereafter made respecting the purchase of brewery products; provided, that equipment, fixtures or supplies furnished, given, rented, loaned or sold to any person engaged in selling brewery products for consumption on the premises where sold, prior to the effective date of this Act, when removed from the premises of such person or repossessed by any manufacturer or distributor of brewery or by his agents or employees, shall not again be furnished, given, rented loaned or sold to any person engaged in the sale of brewery products for consumption on the premises where sold.

This subsection shall not apply to the practice of furnishing carbonic

acid gas or tapping accessories, such as rods, vents, hose, washers, couplings, taps, vent tongues, and check valves to persons engaged in selling brewery products for consumption on the premises where sold, when a charge is made for such carbonic acid gas in accordance with the reasonable open market value thereof in the locality where furnished, and if the aggregate cost to any one person of all tapping accessories herein enumerated furnished to him by such manufacturer or distributor in any twelve months' period does not exceed five dollars for each tapping unit used in dispensing brewery products purchased from such manufacturer or distributor.

(f) (1) To furnish, give, lend, rent or sell any interior decorations or signs costing the manufacturer or distributor collectively more than twenty-five dollars (\$25.00) in any one calendar year, or to furnish, give, lend, rent or sell any sign or signs for outside use, costing the manufacturer or distributor collectively more than five hundred dollars (\$500.00) in any one calendar year, to any person engaged in selling brewery products, for use in or about or in connection with any one establishment in which brewery products are sold for consumption on the premises where sold; (2) To pay money or other thing of value for the privilege of placing or painting a sign on the premises occupied by anyone selling brewery for consumption on the premises where sold. This subsection shall not apply to valid existing contracts for the loan or rental of signs or space for the painting or erection of signs, made prior to the effective date of this Act, but shall apply to prevent the removal or continuance of any such contract at or after its termination; provided, that any such signs when removed from the premises of such person or repossessed by any manufacturer or distributor of brewery products, or by any of his agents or employees, shall not again be furnished, given, loaned, rented or sold to any person engaged in the sale of brewery products for consumption on the premises where sold.

(g) To pay or make any allowance to any buyer for a special advertising or distribution service (1)

Unless in pursuance of a written contract defining the service to be rendered and the payment therefor; and (a) unless such service is rendered and the payment is reasonable and not excessive in amount; and (3) unless such contract is separate and distinct from any sales contract; and (4) unless such payment is equally available for the same service to all competitive buyers in the same class in the same trade area.

(h) To offer any prize, premium, gift, or other similar inducement, except advertising novelties of nominal value, to any dealer in or consumer of brewery products.

(i) To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of any brewery product, if such advertisement causes, or is reasonably calculated to cause deception of the consumer with respect to the product advertised. An advertisement shall be deemed misleading if it is untrue in any particular or if directly or by ambiguity, omissions, or inference, it tends to create a misleading impression. Any advertisement of alcoholic content of any brewery product or any advertisement disparaging of a competitor's products, or that is obscene or indecent, shall be unlawful.

(j) To sell or otherwise introduce into commerce any brewery product that is misbranded. A product is misbranded:

(1) If it is misbranded within the meaning of the Food and Drug Acts.

(2) If the container is so made, formed or filled as to mislead the purchaser, or if its contents fall below the recognized standard of fill.

(3) If it misrepresents the standard of quality of product in the branded container.

(4) If it is so labeled that it purports to be any product other than is actually in the container.

(k) To require, by agreement or otherwise, that any retailer engaged in the sale of brewery products shall purchase any such products from such person to the exclusion, in whole or in part, of the products sold or offered for sale by any other

person engaged in the manufacture or distribution of brewery products, or to require the retailer to take and dispose of a certain quota of any such product.

(l) To give or permit to be given money or anything of value in an effort to induce agent, employees, or representatives of customers or prospective customers to influence their employers or principals to purchase or contract to purchase brewery products from the maker of such gift, or to influence such employers or principals to refrain from dealing or contracting with competitors.

(m) It shall be unlawful for any manufacturer to accept as a return or to purchase or use a hogshead, barrel, half-barrel, keg, case or bottle permanently branded or imprinted with the name of another manufacturer.

(n) To manufacture or sell or otherwise introduce into commerce in this State any brewery product unless it bears a label showing in plain, legible type the name and address of the manufacturer, or the name of the distributor for whom any special brand is manufactured, the brand or trade name, and the net content of the bottle in terms of United States liquid measure; or to manufacture or sell or otherwise introduce into commerce in this State any beer or container or dispensing equipment, carton or case for beer bearing a label or imprint which by wording, lettering, numbering or illustration, on in any other manner carries any references or allusion, or suggestions to the alcoholic strength of the product or to any manufacturing process, aging, analysis or scientific matter of fact, or upon which appears any such words or combination of words, or abbreviations thereof, as "strong", "full strength", "extra strength", "high test", "high proof", "pre-war strength", "full old-time alcoholic strength", or any words or figures or other marks or characters alluding or relating to "proof", "balling" or "extract" contents of the product, or which bears a label that is untrue in any particular or which directly or by ambiguity, omission or inference tends to create a misleading impression or causes, or is reasonably calculated to cause deception of the consumer or buyer with respect to the product.

(2) It shall be unlawful for any retail dealer to dispense any draught beer unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the name or the brand of the particular product being at the time dispensed through such faucet or other apparatus, which sign shall be in legible lettering and in full sight of the purchaser.

(3) Provided, that if any provision of this Section 9 is for any reason held unconstitutional and invalid, such decision shall not affect the validity of the remaining portions, and the Legislature hereby declared that it would have passed this Act and each section, subsection, provision, sentence, clause or phase thereof, irrespective of the fact that any provision is declared unconstitutional.

Sec. 60. (a) Any person desiring a license as manufacturer, distributor or retail dealer may in vacation or in term time file a petition with the County Judge of the county in which the applicant desires to engage in such business, which petition shall state as follows:

If a manufacturer:

(1) That he is a law-abiding, tax-paying citizen of this State, over twenty-one years of age; that he has not been convicted of a felony within two (2) years immediately preceding the filing of said petition, and has been a resident of the county wherein such license is sought for more than two (2) years next preceeding the filing of said petition.

(2) If a co-partnership, that all of the individuals have the same qualifications as provided in paragraph (1) above.

(3) If a corporation, that applicant is organized and chartered under and has complied with all corporation laws of this State applicable to such corporation; the principal place of business in such county where such license is sought, and the President or Manager shall make an affidavit that he is a law-abiding, tax-paying citizen of this State, over twenty-one (21) years of age, and that he has not been convicted of a felony within two (2) years immediately preceding the filing of said petition.

If a distributor:

(1) Such applicant shall give the

same information required of a manufacturer, including the place or places where such business is to be transacted.

If a retail dealer:

(1) The same information required of a manufacturer.

(2) Whether he desires to sell beer for consumption on or off the premises.

If an individual:

(1) That the applicant shall make an affidavit duly signed and sworn to before any person authorized to administer oaths under the laws of this State, showing that he has not since the effective date of this Act, naming the date in the affidavit, and within two (2) years next preceding the making of said application and while engaged in the manufacture, sale or distribution of beer, paid contributed or furnished any money or thing of value to any candidate for any public office in this State.

If the application is in behalf of a corporation, the affidavit shall be by the president, vice-president, secretary or treasurer of such corporation and shall contain a statement that the corporation has not paid, contributed or furnished any money or thing of value to any candidate for any public office in this State since the effective date of this Act, naming the date in the affidavit, and within two (2) years next preceding the making of said application and while engaged in the business of manufacturing, sales or distribution of beer. Any person who makes a false affidavit in reference to the matters and things required by this Section, shall be guilty of a felony, and upon conviction shall be punished as now provided by law for having committed the offense of false swearing.

(b) Such manufacturer, distributor or retail dealer desiring to be licensed shall file said petition with the County Judge who shall set same for a hearing at a date not less than five (5) nor more than ten (10) days from the filing of same, and if upon hearing, he finds the facts stated in such petition are true, he shall authorize a license to be granted as prayed for, provided, however, that upon the filing of such petition, the clerk shall first give notice thereof by posting at the courthouse door a written notice of

the filing of said petition and a copy of the substance thereof, and such notice of the filing shall state when the petition shall be heard. Said petition may be inspected by any person. Any citizen shall be permitted to contest the facts stated in such petition and the applicants right to secure license upon giving security for all costs which may be incurred in such suit, should the same be decided in favor of the applicant; provided, however, no county or district attorney shall be required to give bond for such costs but the county or State as the case may be shall be liable therefor.

(c) Upon the court's authorizing a license to be issued, the Judge shall so certify and deliver a copy of such certification to the applicant, who shall thereupon present the same to the County Tax Collector and pay the fee required, whereupon it shall be the duty of the Tax Collector to issue such a license on a form prescribed by the Commissioner showing the amount paid, date, classification and such other information that may be required by the Commissioner, including the correct address of the place of business. A copy of such license shall be sent by the County Tax Collector forthwith to the office of the Commissioner and a recrod thereof kept in said office.

(d) In the event the County Judge denies the application for a license, he shall enter his judgment accordingly and the applicant may within thirty (30) days thereafter appeal to the District Court of the county where said application is made, and such District Court may hear and determine such appeal in term time or vacation by trial de novo. If the applicant shall prevail by final judgment, a certified copy thereof shall be presented to the Tax Collector who shall thereupon accept the fees required and license shall be issued as provided herein.

(e) Any manufacturer, distributor or person shipping or consigning distilled vinous or malt liquors into this State shall file with the Secretary of State a certificate certifying the name of his agent upon whom service may be had, his or its street address and business, and if such be not done within fifteen (15) days from the effective date hereof then

service may be had on the Secretary of State in any cause of action arising out of the violation of this Act, and it shall be the duty of the Secretary of State to send any such citation served on him to such person who may be in a foreign state, registered, return receipt requested and such receipt will be prima facie evidence of service on such person.

Sec. 61. (a) Upon the payment of the fee to the Tax Collector and the proper evidence from the County Judge that such applicant should be licensed, such Tax Collector shall issue to the applicant the proper license which shall be by him signed, be under the seal of his office, be dated, state on its face for what it is issued, date when it will expire, by whom and where such business is to be conducted and shall describe the place where same is to be kept and whether licensee is authorized to act as manufacturer, general distributor, local distributor or retail dealer of beer as set out in the application.

(b) In the event of the death of any licensee or the dissolution of any corporation or association of persons, leaving unearned portion of any license issued, the legal representatives of such deceased person or surviving partner or director of any such corporation may present the license of such person to the State and county and receive payment of the unearned portion of licensee fee collected, the State's portion to be paid out of the foregoing appropriation to the Commissioner.

(c) The Tax Collector shall make statements to the Commissioner of the amounts collected by him at the times and in the manner as required by the Commissioner.

Sec. 62. (a) If any person manufactures or sells beer in this State as a manufacturer, distributor or retail dealer without then and there being licensed as a manufacturer, distributor or retail dealer respectively, or

(b) If any person or agent representative of any manufacturer, distributor or retail dealer shall manufacture or sell beer for any manufacturer, distributor or retail dealer without such manufacturer, distributor or retail dealer being duly licensed as required by this Act, or,

(c) If any persons shall sell, transport, store or otherwise handle in intrastate commerce, or conspire to sell, transport, store or otherwise handle in intrastate commerce any beer without the stamp required in Section 6 of this Act being placed on the container as required in such section, or,

(d) If any person shall open any such container having a stamp without then and there mutilating or otherwise defacing such stamp so that it cannot be again used, or,

(e) If any person shall attach to any container of beer any stamp that has been theretofore attached to a different container of beer, or

(f) Shall refuse to allow on demand the Commissioner or any representative of said Commissioner to make a full inspection of any place where beer is being stored, transported, manufactured or otherwise handled, or,

(g) If any person shall knowingly or willfully sell any beer to any person under the age of twenty-one (21) years, or,

(h) If any person fails to display any license required by the provisions of this Act in some conspicuous place in the house where such business is conducted, or,

(i) If any person shall sell or offer for sale in this State, whether as principal or agent, any beer unless the same be in or from the original container bearing the original label with the full name of the brewer or manufacturer of such beer both upon the label or bottle and/or upon the cap or cork of such bottle or upon the keg.

No female or any male person under eighteen (18) years of age shall be employed to work in or perform any labor in an establishment where beer is sold by retail to be consumed on the premises where sold and where the sale of beer is the principal business conducted at such place of business, or,

(j) If any person shall violate any provision of this Act whether specifically enumerated above or not.

(k) He shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine in the sum not less than Twenty-five Dollars (\$25.00) and not more than Five Hundred Dollars (\$500.00), or by

imprisonment in the county jail not more than one year or by both such fine and imprisonment except when some other penalty is specifically provided by this Act, in which event the penalty specifically provided shall apply to the specific act or omission.

Sec. 63. (a) Each manufacturer and distributor shall be required to keep records of the amount of beer manufactured and/or bought or received by them and the amount sold, the amount of stamps purchased by them and the amount of stamps used by them and such other records as may be required to be kept by the Commissioner, which records at all time shall be open for the inspection of the Commissioner or its duly authorized representative at reasonable office hours.

(b) If any person shall commit any offense prescribed by Section 63 or violate any other provision of this Act, he shall also forfeit to the State a penalty not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) to be recovered by the State in a suit filed in Travis County or in any county in which such violation may have occurred, which money shall be paid into the State Available School Fund, and each day of such violation shall constitute a separate and distinct violation.

(c) Each sale to any person under twenty-one (21) years of age under the provisions of this Act shall constitute a separate offense.

(d) It shall be unlawful for any person in all counties or subdivisions thereof wherein the sale of beer as defined by this Act is authorized to be sold, to sell beer on the day of any general primary election or general election held in this State, between the hours of seven o'clock A. M. and eight o'clock P. M. of the day, and

(e) It shall be unlawful for any person engaged in or having any interest in any business which manufactures, sells or distributes beer, as defined in this Act, to contribute any money or any other thing of value toward the campaign expenses of any candidate for any office in this State.

(f) No person who may engage in the sale of beer, as a principal business and which is to be consumed on the premises, under the provisions of

this Act shall offer for sale or sell such beer between the hours of twelve o'clock midnight and seven o'clock A. M. on each day as herein provided and from and after twelve o'clock midnight Saturday until seven o'clock A. M. Monday of the following week.

(g) The Commissioners' Court of any county in the territory thereof outside of incorporated cities and towns and the governing authorities of any city or town within the corporate limits of any such city or town may prohibit the sale of beer by any dealer whose principal business is the sale of beer where the place of any such dealer is within three hundred (300) feet of any church, school or other educational institution, the measurements to be along the property lines of the street fronts and from front door to front door in a direct line across intersections where they occur.

No license or permit shall ever be granted, nor shall beer ever be sold in or upon any property, State parks excepted, owned by or under lease by the State or within three hundred (300) feet of the grounds of the State Capitol. This shall not apply to property of the State which is under lease and being used and occupied by others.

(h) The County Judge of any county after ten (10) days notice and hearing may revoke the license of any licensee of such county;

1. When disorderly or immoral practices are permitted on the premises or spirituous, vinous or malt liquors are illegally sold on the premises.

2. Where the word "saloon" is printed, painted or placed upon the door, window or in any other public place on or about the premises or when the word "saloon" is used in any advertisement by the licensee.

Sec. 64. Any person, other than the State Treasurer or his duly authorized agent who shall print or engrave or directly aid in or cause the printing or engraving of any stamps evidencing or purporting to evidence the payment of any tax levied by this Act, or who shall use or consent to the use of any counterfeit or unauthorized stamps in connection with the sale or offering for sale of any beer, or shall place or

cause to be placed on any container containing or to contain such beer any such unauthorized or counterfeit stamps, or if any person shall knowingly possess any counterfeit stamps or shall counterfeit any license to be used in lieu of the stamps or license as required by this Act, he shall be guilty of a felony and upon conviction be punished by imprisonment in the penitentiary for not less than two (2) years nor more than five (5) years.

Sec. 65. Any person, whether as principal or agent of any firm, corporation or association of persons engaged in the business of manufacturing and selling or in the business of distributing and selling or in the retail business of selling beer under license which does not permit such beer to be opened and consumed on the premises where sold, who shall permit any such beer so manufactured and sold or distributed and sold to be opened and consumed on the premises where sold, shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars.

Sec. 66. In addition to the penalties herein provided, the license of any person convicted of violating any of the provisions of this Act shall be subject to forfeiture in a suit filed by the State for such purpose by reason of such conviction; and no license shall be re-issued to any person whose license for any of such occupations has been revoked or forfeited within one (1) year next preceding the filing of his application for a new license.

Sec. 67. In case the license of any licenses hereunder is forfeited under the provisions of this Act, nevertheless such licensee shall be authorized to sell or dispose of in bulk any stock of beer he may have on hand at the time such license is forfeited.

Sec. 68. It is hereby declared to be lawful to transport beer, as herein defined, from any place in this State, where the sale, manufacture and distribution thereof is authorized by law, to any other place within this State where the same may be lawfully manufactured, sold or distributed; and from the State boundary

to any such place, even though in the course of such transportation the route over which the same is being transported may traverse local option territory in which the manufacture, sale and distribution of said beer is prohibited. Provided, however, that any such shipments must be accompanied by a written statement furnished and signed by the shipper showing the name and address of the consignor and the consignee, the origin and destination of such shipment and it shall be the duty of the person in charge of such cargo while it is being so transported to exhibit such written statement to any peace officer making demand therefor, and said statement shall be accepted by such officer as prima facie evidence of the lawful right to transport such beer.

Sec. 69. In all cases where any person pursuing the occupation of selling beer containing not more than four per centum (4%) of alcohol by weight under licenses issued in accordance with the laws of this State has been or shall hereafter be prevented from pursuing such occupation for the full time to which he would be otherwise entitled by reason of the adoption of local option in any county or subdivision thereof the proportionate amount of license fees paid by him for the unexpired term shall be refunded to him.

Sec. 70. No "blinds" or barriers of any kind or character shall be installed or maintained in the openings or doors of any establishment whose principal business is the sale of beer; neither shall any windows on said establishments be painted in such a way as to obstruct the views from the general public.

Sec. 71. Upon having called to his attention by affidavit of any credible person that any person is violating, or is about to violate, any of the provisions of this Act, it shall be the duty of the Attorney General or the District or County Attorney to assist in any proceedings to restrain any such person from the threatened or any further violation, and the District Judge shall have authority to issue restraining orders without hearing, and upon notice and hearing to grant injunction, to prevent such threatened or further violation by the person complaining against, and may require the person

complaining to file a bond in such amount and containing such conditions and in such cases as the Judge may deem necessary. Upon any judgment of the Court that violation of any restraining order or injunction issued hereunder has occurred, such judgment shall operate to cancel, without further proceedings, any license held by the person who is defendant in the proceedings, and no license shall be re-issued to any person whose license has been so cancelled, revoked or forfeited, within one (1) year next preceding the filing of his application for a new license. It shall be the duty of the District Clerk to notify the County Tax Collector and the Commissioner of any judgment of a court which operated hereunder to cancel a license.

Sec. 72. (a) If any section, paragraph, sentence, or phrase of this Act be invalid, then such invalid portion shall not in any way affect the remainder of this Act, and it is hereby declared as the Legislative intent that the remainder of this Act would have been passed by the Legislature notwithstanding the invalidity of such section, paragraph, sentence or phrase.

Sec. 73. (b) The fact that the people of Texas have adopted a Constitutional Amendment legalizing the sale of liquor in wet areas as herein defined and the further fact that the traffic in liquor in this State is unregulated at this time, create an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

VAN ZANDT.

Motion to Table.

Senator Woodruff moved to table the amendment by Senator Van Zandt.

The motion to table prevailed by the following vote:

Yeas—18.

Beck.	Davis.
Blackert.	DeBerry.
Burns.	Hill.
Collie.	Hornsby.
Cotten.	Isbell.

Neal.	Poage.
Nelson.	Redditt.
Oneal.	Small.
Pace.	Woodruff.

Nays—10.

Holbrook.	Sanderford.
Martin.	Stone.
Moore.	Sulak.
Rawlings.	Van Zandt.
Regan.	Westerfeld.

Absent—Excused.

Fellbaum.	Shivers.
Hopkins.	

Amend S. B. No. 11 as amended by striking out the words and figures: One Dollar and Twenty-five Cents (\$1.25) in line 14, Section 56a, page 22, and insert in lieu thereof the words and figures "One Dollar and Fifty Cents (\$1.50)."

VAN ZANDT.

Read.

Senator Sulak sent up the following substitute for the Van Zandt amendment:

Amend S. B. No. 11, as amended, by striking out in Section 56, page 22, line 14, the words and figures: "One Dollar and Twenty-five Cents (1.25), and insert in lieu thereof: "One Dollar (\$1.00.)"

SULAK.

Read.

Motion to Table.

Senator DeBerry moved to table the Sulak substitute.

The motion to table prevailed by the following vote:

Yeas—16.

Beck.	Neal.
Burns.	Nelson.
Collie.	Pace.
Cotten.	Poage.
DeBerry.	Redditt.
Hill.	Oneal.
Hornsby.	Small.
Isbell.	Van Zandt.

Nays—11.

Blackert.	Sanderford.
Davis.	Stone.
Holbrook.	Sulak.
Martin.	Westerfeld.
Moore.	Woodruff.
Rawlings.	

Absent—Excused.

Fellbaum.	Regan.
Hopkins.	Shivers.

The amendment by Senator Van Zandt was adopted by the following vote:

Yeas—14.

Beck.	Nelson.
Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
DeBerry.	Redditt.
Hill.	Van Zandt.
Hornsby.	Woodruff.

Nays—13.

Blackert.	Rawlings.
Davis.	Sanderford.
Holbrook.	Small.
Isbell.	Stone.
Martin.	Sulak.
Moore.	Westerfeld.
Neal.	

Absent—Excused.

Fellbaum.	Regan.
Hopkins.	Shivers.

Amend S. B. No. 11 as amended, page 8, line 58, by adding immediately after the word "liquor," the words "for hire."

MOORE.

Read and adopted.

Amend S. B. No. 11, as amended, page 12, line 27, by striking out the words and figures: "80c," and inserting in lieu thereof: "70c."

MOORE.

Read and pending.

Senator Small sent up the following substitute for the pending Moore amendment:

Amend S. B. No. 11 as amended, page 12, line 27, by striking out the words and figures: "eighty cents," and substituting the words and figures: "One Dollar."

SMALL.

Read.

Motion to Table.

Senator Moore moved to table the substitute amendment.

The motion to table prevailed by the following vote:

Yeas—14.

Beck.	Moore.
Blackert.	Poage.
Collie.	Rawlings.
Davis.	Sanderford.
Holbrook.	Stone.
Isbell.	Sulak.
Martin.	Westerfeld.

Nays—12.

Burns.	Nelson.
Cotten.	Oneal.
DeBerry.	Pace.
Hill.	Redditt.
Hornsby.	Small.
Neal.	Woodruff.

Absent—Excused.

Fellbaum.	Shivers.
Regan.	

Pair Recorded.

Senator Van Zandt (present) who would vote nay, with Senator Hopkins (absent) who would vote yea.

Motion to Table

Senator Small moved to table the pending amendment by Senator Moore.

The motion to table prevailed by the following vote:

Yeas—19.

Burns.	Neal.
Collie.	Nelson.
Cotten.	Oneal.
Davis.	Pace.
DeBerry.	Poage.
Hill.	Redditt.
Hornsby.	Small.
Isbell.	Van Zandt.
Martin.	Woodruff.

Nays—8.

Blackert.	Sanderford.
Holbrook.	Stone.
Moore.	Sulak.
Rawlings.	Westerfeld.

Absent—Excused.

Fellbaum.	Shivers.
Regan.	

(Pair Recorded)

Senator Beck (present) who would vote yea, with Senator Hopkins (absent) who would vote nay.

Amend S. B. No. 11, as amended, by striking out Section 5 and substituting a new Section 5 as follows:

"The Tax Commissioner of the State of Texas shall administer this Act, wherever the word Board is used in this Act such shall mean the Tax Commissioner of Texas.

MOORE.

Read.

Motion to Table.

Senator Cotten moved to table the amendment.

The motion to table prevailed by the following vote:

Yeas—18.

Beck.	Neal.
Blackert.	Nelson.
Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
DeBerry.	Redditt.
Hill.	Small.
Hornsby.	Westerfeld.
Isbell.	Woodruff.

Nays—9.

Davis.	Moore.
Holbrook.	Rawlings.
Martin.	Sanderford.
Stone.	Van Zandt.
Sulak.	

Absent—Excused.

Fellbaum.	Regan.
Hopkins.	Shivers.

Amend Section 10, page 4, line 17 by adding after the word "county" the following:

"Such notice shall be printed in ten (10) point black face type, and the cost of which notice shall be borne by the applicant."

HILL.

Read.

The amendment was adopted by the following vote:

Yeas—22.

Beck.	Holbrook.
Blackert.	Hornsby.
Burns.	Isbell.
Collie.	Neal.
Cotten.	Nelson.
Davis.	Oneal.
DeBerry.	Pace.
Hill.	Poage.

Redditt.
Small.
Sulak.

Van Zandt.
Westerfeld.
Woodruff.

Nays 5.

Martin.
Moore.
Rawlings.

Sanderford.
Stone.

Absent—Excused.

Fellbaum.
Hopkins.

Regan.
Shivers.

Amend Section 21, Subsection (a) by omitting the period after the word "alcohol" on line 29, substituting a semi-colon and adding the words:

"Provided the minimum tax on any package of spirituous alcoholic liquor shall be ten (10) cents."

HILL.

Read and adopted.

Senator Hill sent up the following:

Substitute for S. B. No. 11, as amended, by striking out all below the enacting clause, and inserting in lieu thereof the following:

Section 1. This Act may be cited as the "Texas Liquor Control Act."

Sec. 2. This entire Act shall be deemed an exercise of the police power of the State for the protection of the welfare, health, peace, morals and safety of the people of the State, and all its provisions shall be liberally construed for the accomplishment of that purpose.

Sec. 3. In this Act, unless the context otherwise requires a different meaning:

"Alcohol" is that substance known as ethyl alcohol, hydrated oxide or ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

"Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt of other wholesome grain or cereal in pure water containing not more than four (4) per centum of alcohol by weight, and not less than $\frac{1}{2}$ of one per cent of alcohol by volume. For the purpose of this Act any such beverage, including ale, stout and porter, containing more than four (4) per centum of alcohol by weight shall be referred to as "malt liquor".

"Brewer" means any person engaged in the business of manufacturing beer and/or malt liquor.

"Board" means the Liquor Control Board, constituted under this Act.

The word "Club" means any association of individuals for the purposes of mutual entertainment and shall include the premises occupied or used for any such purpose.

The word "hotel" means every building or other structure kept, used maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for pay to transient or other guests.

The word "restaurant" means space, in a suitable building, approved by the Board, kept, used, maintained, advertised or held out to the public to be a place where bona fide meals are served.

"Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

"Distiller" mean a person engaged in the business of distilling spirits.

"Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to law.

"Drug Store" means a place whose principal business is the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours drug store is open.

"Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

"Fund" mean "liquor revolving fund."

"Imprisonment" means confinement in the county jail.

"Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquors, or combinations thereof, and mixed liquor, a part of which is fermented, spiritous, vinous or malt liquor, or otherwise intoxicating; and every liquor solid or semisolid or other substance, which contains more than one per cent of alcohol by weight shall be conclusively deemed to be intoxicating, as well as medicated liquors capable of producing intoxication.

"Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

"Vendor" means a person employed by the Board, as a store manager under this Act.

"Package" means any container or receptacle used for holding liquor.

"Permit" means a permit for the purchase of distilled liquor under this Act.

"Person" means an individual, co-partnership, association, or corporation.

"Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the State pursuant to law.

"Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this Act for medicinal purposes.

"Public place" includes streets and alleys of incorporated cities and towns, state or county and highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public, and to which the public is permitted to have unrestricted access; railroad trains, bus lines and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

"Regulations" means regulations made by the Board under the powers conferred by this Act.

"Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wines, by any person to any person; and also include a sale or selling within the State to a foreign consignee or his agent in the State.

"Soda fountain" mean a place especially equipped with apparatus for

the purpose of dispensing soft drinks, whether mixed or otherwise.

"Store" means a state liquor store established under this Act.

"Special Distributor" means a person especially designated by the Board, to sell distilled liquors subject to the provision of this Act, in such cities and towns as in the opinion of the Board, there is not sufficient demand or need for a state store.

"Winery" means a business conducted by any person for the manufacture of wine for sale.

"Farmers winery" means a place where any farmer in this State, who grows grapes upon his land, manufactures wine out of such grapes, and sells by wholesale under the provisions of this Act; provided, that said wine shall not contain more than seventeen per cent (17%) of alcohol by weight.

"Wine" means the product obtained by the fermentation of grapes containing natural sugar, or any such product fortified with grape brandy and containing not more than twenty-four per cent (24%) of alcohol by volume, (or nineteen and two-tenths per cent (19.2%) by weight.)

"Spirits" means any beverage which contains alcohol obtained by distillation.

"Wine wholesaler" means a person who buys wine from a vintner or winery located either within or beyond the boundaries of the State for the purpose of selling the same not in violation of this Act, or who represents such vintner or winery as agent.

"Distilled liquor" as the term is herein used, means any liquor having an alcoholic content in excess of 19.2% by weight, and the same also include ethyl, alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof.

An "open saloon" is a place where distilled liquors as herein defined are sold, bartered, exchanged, or given away to be consumed on, at or about the premises; or premises immediately adjacent thereto; and the same is hereby prohibited.

Sec. 4. There is hereby created a Board named the Texas Liquor Control Board, consisting of three persons, all of whom shall be appointed by the Governor by and with the advice and consent of the Senate, and one of whom shall be designated by the Governor to be chairman of the said Board, and said members shall receive

their actual expenses while engaged in the performance of their duties and a per diem of ten dollars per day while so engaged. Each member at the time of his appointment and qualification shall be a resident of the State of Texas and shall have resided in said for a period of at least five (5) years next preceding his appointment and qualification, and he also shall be a qualified voter therein. Of the members initially appointed each shall hold office from the date of his appointment for the following respective terms, and until their respective successors shall qualify: One member for two (2) years, one for four (4) years, and one for six (6) years. Each member may be initially appointed on or subsequent to the date this Act goes into effect. The Governor, at the time of making and announcing the appointment of said three members, as well as in the commission issued by him to each of them, shall designate which of said members shall serve for each of the said respective terms, and also which shall be the Chairman of said Board.

Upon the expiration of each of said terms, the term of office of each member thereafter appointed, shall be six (6) years from the time of his appointment and qualification, and until his successor shall qualify. In case any member shall be allowed to hold over after the expiration of his term, his successor shall be appointed for the balance of the unexpired term. Vacancies in said Board shall be filled by the Governor for the unexpired term. Each member shall be eligible for appointment in the discretion of the Governor. No person shall be eligible for appointment, or shall hold the office of member of the Board, or be appointed by the Board, or hold any office or position under the Board, who has connection with any association, firm, person, or corporation, engaged in or conducting any alcoholic liquor business of any kind, or who holds stock or bonds therein, or who has any pecuniary interest therein, nor shall any such person receive any commission or profit whatsoever from or have any interest whatsoever in the purchase, or sales, made by the Board, or by persons authorized by virtue of this Act to manufacture, purchase, or sell any alcoholic liquors. The soliciting and procuring of an endorsement of any member of the Legislature, for appointment, to

any position under the control of the Board, shall disqualify the person receiving such endorsement from holding the position.

The principal office of the Board shall be in the city of Austin, Texas.

Each member of the Board shall give a good and sufficient bond to the State for Fifty Thousand Dollars (\$50,000), conditioned upon the faithful performance of the duties of his office, the bond to be approved by the Governor and Attorney General and the premium to be paid from the fund herein provided for the Texas Liquor Control Board.

The said Board shall meet at such times and places within the State of Texas as the Board shall determine, and the members thereof shall be entitled to their reasonable expenses for each meeting so attended and the per diem hereinabove referred to. A majority of the members shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the Board. The Board shall appoint an Administrator who shall serve at the pleasure of the Board, and all other officers, attorneys, clerks, stenographers, inspectors, auditors, chemists, experts, and employees as may be necessary. The administrator shall act as manager, secretary, and custodian of the records of the Board, unless the Board shall otherwise order, and perform such other duties as the Board may prescribe. The Board shall, from time to time, make reports to the Governor covering such matters in connection with the administration and enforcement of this Act as he may require, and the Board shall prepare and forward to the Governor annually, to be laid before the Legislature, a report for the twelve (12) months ending on the 31st day of December of the year with respect to which the report is made, which report shall be a public document, and contain

(a) A detailed financial statement and balance sheet showing the condition of the business and its operation during the year; such statement shall show in detail the price paid for all liquor purchased, showing the amount of each purchase and the price thereof;

(b) A statement of the nature and amount of the business transacted

by each vendor under this Act during the year covered by this report;

(c) A summary of all prosecutions for infractions of this Act, and the results of the same;

(d) General information and remarks as to the working of the Act within the State; and

(e) Any further information requested by the Governor or the Legislature.

The Administrator shall devote his entire time to said office, and he shall give bond for the faithful performance of his duties in such form as the Board may approve and in an amount of not less than Fifty Thousand Dollars (\$50,000.00). The Board may fix the duties, salaries, wages of its employees, until such time as the Legislature may otherwise determine, and require such bonds from such employees, as it may deem advisable, and pay the premium thereon. Any employee of the Board who shall engage in promoting or opposing the candidacy of any person for a public office or in promoting or opposing any measure to be voted on by the people, shall be immediately dismissed. Salaries authorized under this Act shall be the same as for similar employment in other departments of the State Government.

Sec. 5. The Board shall be invested with and possessed of the powers and duties in this Act specified, and also the powers necessary or proper to enable it to carry out fully and effectually all the purposes of this Act.

The jurisdiction, supervision, powers, and duties of the Board herein created and established shall extend under this Act to any person or persons, association, firm or corporation, which hereafter shall buy, sell, manufacture, store, import, or transport any alcoholic liquor containing over four per cent of alcohol by weight, within the State of Texas, and said Board may sue and be sued.

Sec. 6.- The functions, duties and powers of the Board shall include the following:

(a) To procure, provide, have in its possession, bottle, blend, rectify, transport and sell, for present or future delivery, in its own name, distilled liquor, in the manner set forth in this Act; and to require State stores to remain closed on Sundays and on all election days; and require

that State stores shall never open before 8 a. m. nor remain open after 10:00 p. m. on any day.

(b) To rent, lease and/or occupy any building, rooms, store or land, and acquire, own, lease and sell equipment and fixtures required for its operations, and to buy any other equipment necessary for its operations whether included in this list or not;

(c) To license and regulate the manufacture, storage, possession, sale, purchase, transportation, importation, and delivery of liquor in accordance with the provisions of this Act.

(d) To grant, refuse, suspend or cancel licenses and permits for the sale or manufacture of alcoholic or other licenses and permits in regard thereto, and to permit in its discretion the transfer of a license of any person;

(e) The taxes and license fees imposed by this Act shall be paid to the State Treasurer. It shall be the duty of the Texas Liquor Control Board to issue licenses provided for by this Act.

(f) To investigate and aid in the prosecution of every violation of this Act, and other Acts relating to alcoholic liquors, to make seizure of alcoholic liquor manufactured, sold, kept, imported, or transported in contravention thereof, and apply for the confiscation thereof, whenever required by this Act, and cooperate in the prosecution of offenders before any Court of competent jurisdiction;

(g) To make such regulations as are necessary and feasible for carrying out the provisions of this Act, and to amend or repeal such regulations;

(h) To exercise all other powers, duties and functions conferred by this Act and all powers incidental, convenient or necessary to enable it to administer or carry out any of the provisions of this Act;

(i) To license, regulate and control the use of alcohol for scientific, pharmaceutical, sacramental, and industrial purposes, and to provide by regulation for the withdrawal thereof from warehouses and denaturing plants, and prescribe the manner in which the same may be used for scientific research for hospitals and sanatoriums, in industrial plants,

and for other manufacturing purposes tax free;

(j) In the event the United States Government shall provide any plan or method whereby the taxes upon alcoholic liquors shall be collected at the source, the Board shall have the right to enter into any and all contracts and comply with all regulations to the end that the Board shall receive the portion thereof allocated to the State of Texas, and to distribute the same as in this Act provided.

Sec. 7. No member of the Board personally shall be liable for any loss caused by the default or failure of the depository of funds of the Board deposited in any bank or trust company, and such funds shall be entitled to priority of payment as public funds of the State;

Sec. 8. All rules and regulations of the Board shall be promulgated by publication in at least five (5) newspapers (such newspapers being published in representative areas of the State) published in the State for three (3) consecutive days; and by posting the same for five (5) successive days in a prominent place at its office and by mailing a copy of the said rules and regulations to the County Clerk of each county in the State where the sale of liquor is authorized, for posting. Such rules and regulations shall become operative when the certificate of the Administrator as to such publication, posting and mailing shall have been filed in the office of the Board, and the filing of such certificate shall be prima facie evidence that this section has been complied with. Copies of all rules and regulations shall be mailed to all State stores and licensed warehouses and posted therein.

Sec. 9. Each member of the Board, the administrator and any special examiner or inspector of the Board, when authorized by the administrator, shall, for the purposes contemplated by this Act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony.

If a person in attendance before

the Board or in attendance before a member thereof refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper when ordered so to do by the Board, the Board, or member, may apply to the Judge of the District Court of any county where such person is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two nor more than five days, directing such person to show cause before the Judge who made the order, or any other District Judge of such county, why he should not be punished for contempt; upon the return of such order, the Judge before whom the matter and such person shall come on for a hearing, shall examine under oath such person and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, the said Judge shall order each person so refusing to do and perform the acts which such person has refused to do, and upon a refusal on the part of such person to do and perform the acts, the Judge of said Court shall punish said offender as for contempt of said Court.

Sec. 10. No person shall be excused from testifying or from producing any books or papers or documents in any investigation or inquiry by or upon any hearing before the Board of any member, when ordered so to do by the Board or a member thereof, upon the ground that the testimony or evidence, books, papers or documents required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for, or on account of any act, transaction, matter or thing concerning which he shall, under oath, have, by order of the Board or a member or its inspector or examiner, testified to, or produced documentary evidence of; provided, however, that no person so testifying shall be exempt from prosecution or punish-

ment for any perjury committed by him in such testimony.

Subpoenas shall be served and witness fees and mileage shall be paid as in civil cases in the District Court. Witnesses subpoenaed at the instance of the Board shall be paid their fees and mileage by the Board.

Sec. 11. The operations of the Board shall be subject to a periodical examination and audit by the State Auditor, the expense thereof to be bornw by the Board of its funds.

Sec. 12. The exclusive right to purchase, sell, have in possession for sale, import or transport, (except for sacramental purposes and not for sale), distilled liquor, hereby is vested in the Board, except as hereinbelow provided.

Sec. 13. The Board shall establish such stores and license such public bonded warehouses, and appoint special distributors, in such places in the State as in its judgment are required by public convenience or necessity, for the storage, and/or sale of distilled liquors, in sealed containers for consumption off the premises, and shall keep on hand in such stores or warehouses, such quantities and kinds of distilled liquors as shall reasonably be required to supply the public demand. However, the Board shall not establish more than six stores, in any incorporated city. Any person qualified to purchase such liquors from the said Board, as hereinafter provided, shall have the right to present to the Board or at any of its stores an application for any kind or brand of such distilled liquor which he may desire, and which may be manufactured or obtained in any place in the United States, and it shall be the duty of the Board to obtain for and sell to such applicant such distilled liquor. Provided however, that if there be only a few or widely scattered applications for a certain brand, that the same may be discontinued by the Board. No store, or special distributor, shall be established in any county or incorporated city or town, or justice precinct of this State where a local option law is in effect prohibiting the sale of distilled liquors. The said stores, or special distributors, shall at all times respect the desires of any county, justice's precinct or incorporated city or town, as to the

sale of liquor in such subdivisions as indicated by the last local option election held in such subdivision and shall never offer for sale nor sell any distilled liquored, the sale of which is prohibited within such subdivision. The advertising of the sale of liquors by the Board or window display in its stores are hereby expressly prohibited, except that the Board may provide for appropriate signs on windows or front denoting the fact that it is a store of the Texas Liquor Control Board, and shall post within such store, appropriate price lists, and may otherwise provide for printed price lists.

No person, firm or corporation shall purchase, or import into this State, any distilled liquor, from any source or for any purpose, except from or through the Board, and any person so purchasing, or importing distilled liquors, in violation of this Section, shall be subject to the penalties hereinafter provided for; provided however, that this provision shall not prohibit an individual entering the State from having in his possession not to exceed one quart of distilled liquor. In addition thereto, any person, firm or corporation so convicted shall forfeit the distilled liquor so purchased or imported to the Board, and the Board thereupon shall seize the liquor so forfeited which then shall become the property of the Board. Provided that nothing herein contained shall mean, or be construed to mean, the prohibition of a winery and/or wine manufacturer from purchasing, or importing into this State, grape brandy to be used purely and exclusively for fortifying purposes.

Sec. 14. The Board shall have the power to, and shall fix the prices at which distilled liquors may be purchased from it; provided, that said prices shall be such that the net annual profit accruing from the sale of distilled liquors, shall not be an amount greater than twenty-five per cent of the annual gross sales; and provided that smallest quantity sold shall be one-half pint. All sales shall be for cash.

Sec. 14a. (1) In cities and towns where the establishment of a State Liquor Store, under the provisions of this Act, does not seem profitable the Board may select a "special distributor," who shall have been in

business in a resident of such city or town not less than two (2) years immediately prior to such appointment, to sell distilled liquors for consumption off the premises; provided, however, that in no case shall such special distributor be the holder of a license to sell or distribute beer or wine, or malt liquor, nor shall such special distributor be granted a license to sell any of the same, while being such special distributor.

(2) Special distributor shall be paid a sum to be fixed by the Board, but in no event shall this sum be in excess of Nine Hundred Dollars (\$900) per annum. All distilled liquors sold by such distributors shall be sold in the original package at the price fixed by the Board, without profit to the distributor, and in accordance with the rules and regulations of the Board.

(3) At any time, if in the judgment of the Board it shall appear advisable, the Board may establish a State Liquor Store in such city or town to replace the special distributor.

(4) If, after a State Liquor Store has been in operation in any city or town, such store should show a loss to the State, the Board may discontinue such store and select a special distributor in accordance with the provisions of this Act.

(5) No special distributor shall be selected in any city or town where there is a State Liquor Store in operation.

Sec. 15. The Board shall not license any one so as to authorize the sale, by such licensee, of distilled liquors; with such limitation, however, the Board shall provide for the licensing as herein provided of corporations, firms and individuals to manufacture spirits, wines, beer and other liquors, and for the distribution and sale of beer and wine and other liquors (except distilled liquors), and for the sale for consumption on the premises of beer, wine, and other liquors (except distilled liquors) in places of public resort and entertainment as herein described.

Every applicant for a license of any of the characters hereinafter prescribed, shall be required to give, and at all times maintain, a bond with surety acceptable to the Board, in the penalty as hereinbelow described as to class conditioned that

such applicant will comply with this Act and Acts amendatory thereto, and with the rules and regulations promulgated by the Board pursuant thereto, and will pay any fines imposed because of any violation thereof. The Board shall require of every applicant for a license the recommendation in writing of the County Judge of the county wherein such licensee proposes to do business.

Sec. 16. The Board may refuse to license any applicant if it has reasonable ground to believe any of the following to be true:

1. That there are sufficient licensed premises in the locality of the licensee's premises, or that the granting of a license in the locality set out in the application is not demanded by public interest or convenience.

2. That the applicant has not furnished an acceptable bond.

3. That the applicant lacks sufficient funds to maintain an establishment properly.

4. That any applicant to sell at retail for consumption on the premises has been provided with funds by, or has any connection with a manufacturer of, or wholesale dealer in liquor.

5. That the applicant is in the habit of using alcohol beverages or habit forming drugs to excess.

6. That the applicant has made false statements to the Board.

7. That the applicant is not a citizen of the United States, or is incompetent or physically or mentally unable to carry on the management of the establishment proposed to be licensed.

8. That the applicant has been convicted of violating any of the liquor laws of this State, general or local, including the provisions of this Act, or has been convicted at any time of a felony, or is a person who habitually violates the laws of this State.

9. That the applicant has maintained a noisy, lewd, disorderly or unsanitary establishment.

Sec. 17. The Board may cancel or suspend any such license granted if it finds or has reasonable ground to believe any of the following to be true:

1. That the licensee violated any provisions of this Act or Acts amendatory hereof or any regulation of the Board pursuant hereto.

2. That the licensee has made any false representations or statements to the Board in order to induce or prevent action by the Board.

3. That the licensee is not maintaining an acceptable bond.

4. That any retail licensee is acting as an agent of a manufacturer or wholesaler of liquors or has borrowed money or property or accepted gratuities or obtained the use of equipment from such manufacturer or wholesaler or any agent thereof.

5. That the licensee maintains a noisy, lewd, disorderly or unsanitary establishment or has been supplying impure or otherwise deleterious beverages or food.

6. That the licensee is insolvent or incompetent or physically or mentally unable to carry on the management of his establishment.

7. That the licensee is in the habit of using alcoholic liquor or habit forming drugs to excess.

8. That the licensee knowingly has sold liquor to persons under twenty-one (21) years of age, to persons known to be drunkards, or to persons visibly intoxicated at the time of sale.

9. That the licensee has misrepresented to a customer or the public any liquor sold to him.

10. That the licensee, since the granting of his license, has been convicted of a felony or has been convicted of violating any of the liquor laws of this State, general or local, including the provisions of this Act.

11. That there is any other reason which, in the opinion of the Board, based on public convenience or necessity, warrants canceling or suspending such license.

12. Upon the written complaint of any County Judge, and his request, the Board shall cancel any retail dealers license granted in the county of the residence of such complaining Judge.

Notice of cancellation or suspension, stating the reason therefor shall be served upon the licensee or upon whatever person may be in charge temporarily or otherwise of the licensed premises, or affixed to the outside of a door of the licensed premises, or shall be sent by United States registered mail addressed to the licensee at the licensed premises, and cancellation or suspension shall take effect upon the affixing, service

or delivery of such notice, except as otherwise provided herein.

Sec. 18. Any license granted under this Act shall be a purely personal privilege, good for the year in which issued, and ending on December 31st of each year at 12 o'clock midnight, and revocable for the causes herein stated, subject to appeal as hereinafter provided, and shall not constitute property, nor shall it be subject to attachment or execution, nor shall it descend by the laws of testate or intestate devolution, but shall cease upon the death of the licensee; provided, that the Board may, by regulation, provide for the time and manner in which the successor in interest licensee may dispose of alcoholic liquors left on hand by the licensee.

Sec. 18a. And in the event of any person being aggrieved by any decision, rule or order of said Board, such person shall have the right of an appeal therefrom to the District Court of the county in which a decision, rule or order in such case would become effective, said suit to be against the Board along as defendant, and such suit shall be tried de novo, and be governed by the same rules as other suits in said Court.

Sec. 19. Licenses shall be issued subject to the regulations of the Board, and the provisions of this Act, and shall be of the following classes, enumerated and described in this section:

1. Brewery License. A brewery license shall allow the manufacture, storage, sale and distribution, and transportation of beer, and malt liquor.

2. Winery License. Winery licenses shall authorize the holder thereof to manufacture, bottle, package, and label wine; said permit shall also permit the holder thereof to manufacture grape brandy to be used exclusively for fortifying purposes by its holder on the premises for which issued. Said winery licenses shall also authorize the holder thereof to sell the same to any person, firm, or corporation, permitted under this Act to handle and sell liquors.

3. Distillery License. A distillery license shall allow the holder thereof to manufacture, distill, import, rectify, blend and store distilled liquors and to sell the same to the

Board; and or under regulations of the Board, to any other persons authorized to purchase such liquors under the laws of Texas or the United States; provided that the holder of a distillery license may sell grape brandy to a winery or wine manufacturer where the same is to be used exclusively for fortifying purposes, on the premises where wine is manufactured. It shall be unlawful for any such licensee to sell, barter, exchange, or give away, any alcoholic liquors, of any kind whatsoever for consumption on his premises.

4. Restaurant License. A restaurant license shall allow the licensee to sell all liquors, except distilled liquors, for, on or off premises consumption.

5. Hotel License. Hotel licenses shall be in all respects identical as to privileges, obligations and penalty with restaurant licenses.

6. Club Licenses. Whenever a club as defined in Section 3 hereof has been in existence and acting not less than one year prior to application therefor, and not otherwise, a club license may be issued which shall allow the retail sale of all liquors, excepting distilled liquors, to be consumed on the premises, and only by members or their guests. The sale of any liquors in such club other than above specified shall be unlawful.

7. Druggist's License. A druggist's license may be issued to any person operating a pharmacy, and who is or has in his employ a qualified registered pharmacist under the laws of this State. A druggist's license shall allow the use of alcoholic liquors for the compounding of physicians' prescriptions, and for the manufacturing of all United States Pharmacopoeia and National Formulary Preparations and all other medicinal preparations unfit for beverage purposes, and shall allow the sale of all distilled and fermented liquors listed in the U. S. P. and N. F. in containers of not more than one pint capacity upon prescription only and with the limit of one pint on each prescription. It shall be unlawful for any such licensee to permit the drinking of any liquors on the premises of any drug store. Such licensee may purchase distilled liquor only from or through the Board. Provided this license provision shall not

prevent the issuance of a retail dealers' license to any drug store.

8. Sales on Prescription. Registered pharmacists shall be allowed to fill a prescription for any physician duly licensed by the State of Texas of liquors of any kind, without regard to any local option laws or ordinance forbidding the sale of such liquors, provided such prescription shall include the name and address of the person for whom it is prescribed, and shall be signed by the full name of such physician issuing such prescription. Such prescription shall be filled only once, and the person making the sale of such prescription shall write on the face thereof the number of such prescription, and the date of the sale of delivery of such liquor and shall keep such prescription on file and available at all reasonable times to the inspection of the Board.

9. Railroad or Boat License. A license to sell other than distilled liquor may be granted to any corporation which operates an electric or steam railroad in this State, or which operates club, parlor or dining cars upon the lines of any railroad in this State, or to any corporation or person operating a boat or boats engaged in the transportation of passengers to or from any port in this State. Such railroad license shall allow the sale and public consumption of liquors, in club or dining car only, and only in those political subdivisions where there is no local option law against the sale of such liquors.

10. General distributor. A general distributor's license shall allow the licensee to distribute or sell liquors, other than distilled liquor, to local distributors and retail distributors in the original package; provided that it shall be lawful for any general distributor authorized to handle wine to bottle, and/or package wines, and for that purpose may break or open any container, receptacle, or original package and transfer said wine to another container, receptacle, or package, and may label the same, provided that such licensee shall also be authorized to become an importer of liquors other than distilled liquors, and bottle, package, and label the same as herein provided, and may likewise export the same. A General Distributor may be licensed to sell beer

exclusively, in which case the fee shall be One Hundred Dollars (\$100).

11. Local Distributor. A local distributor's license shall allow the licensee to sell and distribute liquors, other than distilled liquor, to retail dealers, and ultimate consumers in the county of his residence, in unbroken packages, not to be consumed on the premises where sold, provided that in the case of wines it shall be lawful to break or open any container, receptacle, or original package, and transfer said wine to another container, receptacle or package, but same must be consumed off the premises where sold.

12. Retail Dealer's License. A retail dealer's license shall authorize the licensee to sell liquors other than distilled liquors for consumption on the premises where sold; such licenses shall also authorize the sale of liquors other than distilled liquors for consumption off the premises. It shall be unlawful for any person to carry on any business set forth in the foregoing twelve (12) sections without having first applied for, and secured a license, so to do, as required by this Act.

13. Warehouse License. A warehouse license may be issued to any bona fide public bonded warehouse to store distilled liquor on consignment, for sale to the Board, and to store and handle distilled liquor owned by the Board. It shall be unlawful for any public bonded warehouse in this State to handle or store distilled liquor until and unless such warehouse has been licensed by the Board, except that Public Bonded Warehouses in local option areas may be permitted by the Board to handle and store liquor for medicinal or industrial purposes. To secure a license under this section a Public Bonded Warehouse shall be a bona fide bonded warehouse, deriving at least fifty (50) per cent of its gross revenue, from the storage and handling of commodities other than distilled liquor.

Such Public Bonded Warehouses as may be licensed by the Board shall give a surety bond payable to the Board, in such amount as may be deemed necessary to insure the faithful performance of any and all rules and regulations which may be promulgated by the Board for the handling, storage and/or sale of distilled liquor, and to guarantee the safe keeping of such distilled liquor, as may be owned by the Board and stored in such Warehouse. Public Bonded Warehouses shall pay for the privilege of being licensed, an annual fee in such sum as the Board may determine, in proportion to the use made of such warehouse, the minimum fee being Fifty Dollars (\$50.00) and the maximum fee being Two Hundred Dollars (\$200.00). Warehouse licenses issued by the Board may be cancelled by the Board upon thirty (30) days written notice for good and sufficient cause. Violation of the liquor laws, failure to observe the rules and regulations of the Board, failure to maintain continuous and unbroken bond, unsafe and/or unsound structural or financial condition, shall be just causes for the cancellation of warehouse licenses. Such licenses shall in all respects be subject to all the provisions in this Act pertaining to the issuance of and cancellation of licenses issued by the Board.

Sec. 20. Any person desiring a license or renewal of a license shall make a sworn statement to the Board upon forms to be furnished by the Board showing the name and address of the applicant, his citizenship, location of the club or place of business which is to be operated under such license, and such other pertinent information as the Board may require. No license shall be granted or renewed until the provisions of this Act, and the regulations of the Board, shall have been complied with. The annual license fee which shall be paid by each applicant upon the granting of an annual license, and the bond required of each class of licensee are as follows:

License	Fee	Bond
Brewery	\$1,000.00	\$ 5,000.00
Winery	50.00	1,000.00
Farmer's Winery	10.00	200.00
Distillery	2,500.00	10,000.00
Restaurant	25.00	1,000.00
Hotel	25.00	1,000.00
Club	25.00	1,000.00
Druggist	10.00	1,000.00
Railroad, Club Car or Dining Car (per car)	10.00	1,000.00
Boat	50.00	1,000.00
General Distributor	200.00	5,000.00
Local Distributor	25.00	1,000.00
Retail Dealer	25.00	1,000.00
General Distributor (beer only)	100.00	2,000.00

Sec. 20a. The application for a license shall be accompanied by the license fee and bond prescribed in this Act, and the Board shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied, qualify for a license. If an application is denied the license fee shall be returned to the applicant less Five Dollars (\$5), which amount shall be deposited in the fund provided for in this Act.

Provided however, that as to any license granted subsequent to January 1st of any year, the license fee payable shall be the proportionate part for the remainder of the year computed on a quarterly basis, and all licenses or purchasers' permits issued as herein provided shall not expire until January 1st of the following year.

Sec. 21. All persons having any liquor of more than than four (4%) per cent alcoholic content on hand in this State, shall within thirty (30) days from the effective date of this Act, make a true inventory and report of such liquor to the Board and shall pay the taxes herein levied and assessed. Failure to report and pay the taxes on, or meet any other requirement in this section concerning any such liquor shall render the same subject to confiscation by the Board as is herein provided, and shall operate as a bar to such person receiving any character of permit under this Act.

Sec. 22. There is hereby levied and imposed in addition to the other fees and taxes levied by this Act the following:

(a) A tax of two (2) cents on each gallon of still wine that does not contain over fourteen per centum (14%)

of alcohol by volume, sold or offered for sale in this State.

(b) A tax of four (4) cents on each gallon of still wine containing more than fourteen per cent (14%) and not over twenty-four per cent (24%) of alcohol by volume, sold or offered for sale in this State.

(c) A tax of Twenty-five (25) cents on each gallon of natural sparkling wines sold or offered for sale in this State.

(d) A tax of twenty-five (25) cents on each gallon of artificially carbonated wine sold or offered for sale in this State.

(e) A tax of fifteen (15) cents on each gallon of malt liquor containing alcohol in excess of four per cent (4%) by weight sold or offered for sale in this State.

Sec. 22a. All taxes levied under the provisions of this Act, shall be paid to and/or collected by the State Treasurer, and shall be paid into the General Revenue Fund. The Board is herewith expressly authorized to promulgate such rules, regulations and forms as it may deem necessary to effect the collection of these taxes and fees, and to employ such personnel as may be necessary to make such collections.

Sec. 22b. The taxes herein levied shall be paid by affixing stamps on each bottle original container of malt liquor, or wine; said stamps shall be purchased from the State Treasurer, and shall be affixed and cancelled in accordance with any rule or regulation promulgated by the Board, and not inconsistent with any other provisions of this Act. In the case of malt liquor containing alcohol in excess of four per cent by weight, and manufactured within this State, it shall be the duty of the brewer to

affix and cancel said stamps before selling or delivering the same to any person without the State, or to any licensee permitted to handle the same under the provisions of this Act. In the case of malt liquor containing alcohol in excess of four per cent by weight being imported into this State it shall be the duty of the licensee first receiving said malt liquor, within this State to affix and cancel stamps on each bottle or container of said malt liquor. In the case of wines manufactured within this State, it shall be the duty of the manufacturer before selling or delivering the same to any person without this State, or to any licensee within this State permitted to handle the same, to affix and cancel the stamps required to be so affixed, to the bottles or other containers in which said wines are sold or delivered. In the case of wines imported into this State, it shall be the duty of the licensee first receiving the same within this State to affix and cancel the stamps, required by this Act, to the original container in which said wines were so received, and no further stamps shall be required if a portion and/or the whole of the contents of said original container be removed for resale as provided for in this Act.

Sec. 22c. The persons charged with the duty of affixing and cancelling stamps as provided for in this Act shall be liable for the payment of the tax provided for in this Act, and any person who sells or delivers any liquor, (other than distilled liquor) herein mentioned, subject to the tax herein provided for, without affixing and cancelling the same shall be guilty of a felony and punished according to the laws of this State as in such cases made and provided.

Sec. 22d. None of the provisions of this Act shall mean or be construed to mean, or apply to commerce with foreign nations or commerce with the several states, except insofar as the same may be permitted under the Constitution and Laws of the United States, nor shall the tax imposed by Section 22 of this Act apply to liquor sold and actually exported from this State by a person licensed to manufacture or export, or by subsidiary of a person licensed to manufacture or export; nor shall any tax provided for in Section 22 of this Act be imposed upon any person importing liquor, other than distilled liquor, into this State in any case where a licensee

so receiving the same is required to pay said tax, and affix and cancel the stamps provided for herein.

Sec. 23. For the purpose of establishing the Texas Liquor Control Board and enabling it to immediately begin its operations there is hereby appropriated out of any money in the General Revenue Fund of the State not otherwise appropriated the sum of Three Hundred Thousand Dollars (\$300,000) as a Revolving Fund. It is hereby declared to the legislative intent that no further appropriations shall be made to the Texas Liquor Control Board, but that its expenses of operation shall be paid out of the funds derived and accruing under the terms of this Act.

Sec. 23a. For the purpose of carrying out the provisions of this Act, there is hereby created a fund, to be known as the "liquor revolving fund," which shall consist of all permit fees, penalties, forfeitures and all other moneys, income or revenue received under this Act.

Sec. 23b. All expense whatsoever arising under the administration of this Act including the payment of the salaries of the members of the Board and its employees, such sums as shall be certified by the State Auditor in respect to the auditing of the accounts of the Board and the certification of its balance sheets, and all expenditures incurred in establishing, maintaining and operating State Liquor Stores, and of conducting the business of the Board shall be paid from said liquor revolving fund.

All moneys shall be paid from the liquor revolving fund by voucher in such form and in such manner as shall be prescribed in the regulations.

Sec. 23c. The liquor revolving fund shall be deposited by the Board in such banks and financial institutions as it may select throughout the State of Texas, which banks and financial institutions shall give to the Board surety bonds executed by surety companies authorized to do business in the State of Texas, or collateral eligible as security for deposit of State funds, in at least the full amount of the deposit in each such bank or financial institution.

All moneys received by the Board or any employee under this Act, except an amount of petty cash for each day's needs as fixed by the regulations, shall be each day and as often during such day as advisable, deposited in

the nearest authorized depository selected by the Board under the terms of this Section.

Sec. 23d. Whenever there shall be in the liquor revolving fund, moneys in excess of Three Hundred Thousand Dollars (\$300,000) such money shall from time to time, and at least once every three months, be distributed by said Board as follows: Thirty (30) per cent of the net profits, in each of the several counties, derived by the Board from the operation of State owned stores located therein, shall be allocated by the Board to each of said several counties of the State of Texas, in proportion to the net profits earned by the stores located therein; and one-half of said thirty (30%) per cent shall be remitted to the county treasury for the account of the General Fund of each of such counties wherein such stores are operated; and the other fifteen (15%) per cent shall be remitted to the treasury of the several incorporated cities or towns of each of such several counties, in proportion to the ratio of the population of the several cities in each of such counties, as evidenced by the last Federal Census; and the remainder of all such funds not specifically allocated above shall be deposited in the State Treasury to the credit of the General Fund.

Sec. 24. No person of the classes from which bonds are re-required shall receive a license or renewal of a license for the manufacture or sale of liquor until he shall have filed with the Board a joint and several bond with sureties satisfactory to the Board in the amount as herein required, conditioned upon compliance with the provisions of this Act, and the regulations of the Board. If the licensee shall be convicted for the violation of any provision of this Act and no appeal is pending, such bond shall thereupon be forfeited and the Board may in its own name institute action upon such bond for the benefit of the Board, and upon proof of conviction, brought shall render judgment in the Court before whom suit is favor of the Board for the amount of the bond, costs, and disbursements. Right of action on such bond shall expire twelve (12) months after the death of the licensee, or the expiration of his license, whichever first may happen.

Sec. 25. The Board shall have the

right at any time to make an examination of the books and premises of any licensee, or to check the alcoholic content of liquors carried by the said licensee, for the purpose of determining whether this Act, and the regulations of the Board, are being complied with. Provided, that all liquors destroyed, or taken, for testing purposes, shall be paid for by the Board.

Sec. 26. All firms, persons, or corporations hereby are prohibited from brewing, fermenting, distilling, blending, or rectifying any liquor, or storing distilled liquor, unless licensed so to do by the Board; provided that this Act shall not apply to the making of naturally fermented wines and fruit juices or beer in the home, for home consumption and not for sale; provided that the amount of such naturally fermented wines or beer that shall be permitted to be made for home consumption shall not exceed the amount provided for and permissible under the rules and regulations of the Federal Government. Nor shall any person firm or corporation sell any distilled liquor to any person, firm or corporation within the boundaries of this State except to the Texas Liquor Control Board. Any person, firm or corporation violating this section shall be guilty of an offense and upon conviction shall be subject to the penalties hereinafter provided.

Sec. 27. It shall be unlawful for any licensee to use or allow the use of any mark or label on the container of alcoholic liquor which is kept for sale, which container does not precisely and clearly indicate the nature of the contents of each container, or which in any way might deceive any customer as to the nature, composition, quantity, age or quality of such liquor.

No such holder of a license may for any reason mix or permit the mixing of any liquor which he is authorized to sell with any liquor the sale of which is not authorized by his license. The Board may refuse to sell or prohibit any licensee from selling any brand of liquor which in its judgment is deceptively labeled or branded as to content, or contains injurious or adulterated ingredients.

Sec. 28. The Board hereby is empowered to limit the quantities of distilled liquors, which may be pur-

chased at any one time from a State store, by any person, firm or corporation, or to limit the amount of purchases within any length of time so as to effectually prevent resale of such liquors.

Sec. 29. No distillery shall be set up or operated in this State for the purpose of manufacturing liquor for beverage purposes, other than vermouth, or be used in the manufacture thereof, other than vermouth, except by a person duly licensed under the provisions of this Act to operate a distillery. Any device, or any process, which separates alcoholic spirits from any fermented substance shall be regarded as a distillery. A distillery shall be regarded as set up when the still is in position over a furnace, or is connected with a boiler, so that heat may be applied, although the worm or worm tank is not in position.

Any mash, wort, wash or distillery found in any house or on any premises, or within any inclosure, shall, in the case of the mash, wort or wash, be deemed prima facie to have been made and fermented by, and in the case of a distillery, shall be deemed prima facie to have been set up by, and to be the property of the person who is in possession of such house, premises or inclosure.

Any person or persons violating any provision of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than One Thousand Dollars (\$1,000), or by both such fine and imprisonment. Any person found guilty of a second or subsequent offense under this section shall be deemed guilty of a felony, and shall be punished by imprisonment in the penitentiary for a term of not less than one (1) year, nor more than three (3) years, and by a fine of not more than Three Thousand Dollars (\$3,000).

Sec. 30. It shall be unlawful:

For any person to peddle or deliver liquor to or at any place where without a license, liquor is sold or offered for sale or for any licensee to sell or offer for sale, any liquor of a kind, or in a manner, or to a person, other than his license permits him to sell; or

For any person to purchase or import distilled liquor from any

source, except from or through the Board; or

For any person to sell liquor to any person under the age of twenty-one (21) years, or for any person other than a parent, guardian, or other responsible relative to give any alcoholic liquor to any person under the age of twenty-one (21); or

For any person being the holder of a license to retail liquor either for consumption on his premises, or in sealed packages, to receive assistance financially, or in some other material manner, from any manufacturer or wholesaler of liquor, or agent thereof, or for any manufacturer or wholesaler, or agent thereof, to give such assistance; or

For any person being the holder of a license under this Act to violate any of the regulations promulgated by the Board; or

For any person to maintain or assist in maintaining a common nuisance as defined by this Act; or

For any person not being licensed under this Act to sell liquor; or

For any licensee under this Act to make any contribution to any candidate for political office or to any political party or measure.

Any person or persons who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, except in cases where the punishment is otherwise herein specifically provided, shall be punished by a fine of not more than Five Hundred Dollars (\$500), and by imprisonment in the county jail for not more than six (6) months, and for any subsequent violation of any of the provisions of this Act not thus otherwise herein specifically provided for, such person shall, upon conviction, be punished by a fine of not more than One Thousand Dollars (\$1,000), and by imprisonment in the county jail for not more than one year.

Sec. 31. It shall be unlawful for anyone to interfere with or hinder any officer or inspector authorized by the Board, or other competent authority, in the investigation of any infringement of this Act, or in the making of any lawful search, examination or seizure, in the performance of his duties to that end. Any person or persons who shall violate any provision of this Sec-

tion shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for not more than three (3) months, or by a fine of not more than Two Hundred and Fifty Dollars (\$250), or by both such fine and imprisonment.

Sec. 32. In any prosecution for the sale of liquor it shall not be necessary to prove the exact variety, or to mention the quantity of liquor sold, except in the case where the variety or quantity are essential to establish the offense.

Sec. 33. It shall be the duty of all State officers, sheriffs, constables and public officers, charged with the duty of enforcing the law, to enforce all violations of this Act, and to assist the Board in detecting violations of this Act, and apprehending offenders. Whenever any officer shall arrest any person for violation of this Act, he shall take into his possession all liquor which the person so arrested has in his possession, or on his premises, which is apparently being used in violation of this Act. In the event the person so arrested is convicted finally, and it is found that the said liquor was possessed in violation of the law, the same shall be forfeited to the Board, and shall be delivered by the Court or Officer to the Board.

Sec. 34. Any room, house, building, boat, structure, or place of any kind where liquor is sold, manufactured, bartered or given away in violation of the law, or where persons are permitted to resort for the purpose of drinking alcoholic beverages in violation of the law, or any place where such beverages are kept for sale, barter, or gift, in violation of the law, and all alcoholic liquor and all property kept and used in said place, hereby are declared to be a common nuisance; and any person who maintains or assists in maintaining such common nuisance shall be guilty of a violation of this Act. And if it shall be proved that the owner of any building or premises knowingly has suffered the same to be used or occupied for the manufacture, sale or possession of alcoholic beverages, contrary to the provisions of this Act, such building or premises shall

be subject to a lien for, and may be sold to pay, all fines and costs assessed against the occupant of such building or premises, by reason of any violation of this Act; and such lien shall be enforced immediately by civil action in any Court having jurisdiction by the District Attorney and/or County Attorney for the county wherein such building or premises is located.

Sec. 35. The Attorney General, District Attorney, County Attorney or the Board, or its employees in the county where such nuisance exists or is kept or maintained, may maintain an action by injunction in the name of the State to abate, and to temporarily and permanently enjoin such nuisance. And the Court shall have the right to make temporary and final orders, as in other injunction proceedings. The plaintiff shall not be required to give bond in such action and upon final judgment against the defendant, such Court shall order that said room, house, building, structure, boat or place of any kind shall be closed for a period of one year; or closed for a part of said time, and until the owner, lessee, tenant or occupant thereof shall give bond, with sufficient surety to be approved by the Court making the order, in the penal sum of not less than One Thousand (\$1,000.00) Dollars, payable to the State, and conditioned that alcoholic liquor shall not thereafter be manufactured, possessed, sold, bartered or given away, or furnished or otherwise disposed of, thereon or therein, or kept thereon or therein, with intent to sell, barter or give away or otherwise dispose of same contrary to law, and that he will pay all fines, costs and damages assessed against him for any violation of this Act. If any conditions of such bond be violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated. In any such action a notice to non-resident defendants may be given by publication or service as authorized by law in other proceedings.

Sec. 36. When any sheriff, constable or police officer or any officer of the law, shall discover any person in the act of transporting, in violation of law, alcoholic liquor, in or upon any wagon, buggy, auto-

mobile, water or air craft, or other vehicle, or conveyance of any kind, it shall be his duty to seize any and all liquor found therein, and to take possession of the vehicle and team or automobile, boat, air, or water craft, or any other conveyance, and to arrest any person in charge thereof. Such officer shall at once proceed against the person arrested, under the provisions of this Act, in any Court having competent jurisdiction, and shall deliver the vehicle and team or automobile, boat, or air or water craft or other conveyance to the sheriff of the county in which such seizure has been made but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties in a sum double the value of the property, which bond shall be approved by the sheriff and shall be conditioned to return said property to the custody of said sheriff on the day of trial, to abide the judgment of the Court. The Court, upon conviction of the person so arranged, shall order the liquor delivered to the Board, and unless good cause to the contrary is shown by the owner, shall order a sale at public auction by the sheriff of the county of the property seized, and said sheriff, after deducting the expense of keeping the property, and the cost of sale, shall pay all the liens, according to their priorities, which are established by intervention or otherwise at such hearing or in other proceedings brought for said purpose, and shall pay the balance of the proceeds into the general fund of the county; provided, that no claim of ownership or any right, title or interest in or to said vehicle shall be held valid unless said claimant shows to the satisfaction of the court that he is in good faith the owner of said claim and had no knowledge that said vehicle was used or to be used in violation of law. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. "If, however, no one shall be found claiming the wagon, vehicle, water or air craft, automobile, boat or other conveyance, the taking of the same with a description thereof shall be advertised once a week for two weeks

in some newspaper published in the city or county where taken, or if there be no newspaper published in such city or county, then by handbills posted in three public places near the place of seizure, and shall likewise notify by mail the legal owner, in the case of an automobile, if licensed by the State of Texas, as shown by his name and address in the records of the State Highway Department, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the general fund of the County.

Sec. 37. The Commissioners Court of each county in the State, whenever they deem it expedient, may order an election to be held by the qualified voters in said county or of any justice precinct, incorporated city or town, to determine whether or not the sale of liquor shall be prohibited or permitted in such county, justice precinct, incorporated town or city, provided it shall be the duty of said Commissioners Court to order the election as aforesaid whenever petitioned to do so by as many as ten per cent (10%) of the qualified voters of said county or of said political subdivision, taking the vote for Governor at the last preceding general election as the basis for determining the qualified voters in any county or political subdivision. Any petition may be made and any election held to permit or prohibit the sale of any alcoholic liquor and of various alcoholic contents in any subdivision referred to in this section. After the first local option election held as provided in this Act, in any county, justice precinct, incorporated town or city, no subsequent election in the same political subdivision shall be held for the purpose of determining whether or not alcoholic liquor as defined in this Act shall be permitted or prohibited earlier than twelve (12) months from the date of the preceding local option election in said county or said political subdivision of said county.

Sec. 38. When the Commissioners Court, of their own motion or upon the petition provided for, shall order an election as herein provided for, it shall be the duty of said Court to order

such election to be held at the voting places within such subdivision or county upon a day not less than twenty (20) nor more than thirty (30) days from the date of said order, and the order thus made shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity or to clothe the Court with jurisdiction to make it valid have been fully complied with, provided that said Court shall appoint such officers to hold such election as now required to hold general elections.

Sec. 39. The clerk of said Court shall post or cause to be posted at least one (1) copy of said order in each election precinct in such political subdivision or county affected, for at least six (6) days prior to the day of election, which election shall be held and the returns thereof made, in conformity with the provisions of the General Laws of the State of Texas, and by the election officers appointed and qualified under such laws.

Sec. 40. At said election the vote shall be by official ballot which shall have printed or written at the top thereof in plain letters the words "Official Ballot." Said ballot shall have also written or printed thereon the words "For the sale of beer," or "For the Sale of beer, malt liquor and wines," or "For the sale of distilled liquors" as the case may be, and the ballot to be thus used shall state the kind of liquors for the sale of which the election was ordered as above provided for. The ballot shall also contain in a further paragraph thereon either the words "Against the sale of beer," or "Against the sale of beer, malt liquor and wines," or "Against the sale of distilled liquors" as the case may be, and the Clerk of the County Court shall furnish the presiding officer of each such voting box within such subdivision or county with a number of such ballots, to be not less than twice the number of qualified voters at such voting boxes and the presiding officer of each voting box shall write his name on the back of each ballot before delivering the same to the voter and each person offering to vote at such election shall, at the time he offers to vote, be furnished by such presiding officer with one such ballot; and no voter shall be permitted to leave the voting booth with such ballot; and shall not be assisted in voting by any person except such pre-

siding officer or by some officer assisting in the holding of such election, under the direction of such presiding officer when requested to do so by such voter, and provided none but qualified voters shall be allowed to vote at such election.

(a) Those who favor the sale of liquor of the type described shall strike out the words "Against the sale of such liquor described" by making a pencil mark through same, and those who oppose it shall strike out the words, "For the sale of such described liquors," depending on the type of content of the liquor to be legalized or prohibited by making a pencil mark through same. No ballot shall be received or counted by the officers of such election that is not an official ballot, and that has not the name of the presiding officer of such election written thereon in the handwriting of such presiding officer as provided by this Act.

Sec. 41. The officers holding such election shall, in all respects not herein specified, conform to the general election laws in force regulating elections; and after the polls, are closed proceed to count the votes and within three (3) days thereafter make due report of said election to the aforesaid Court. The provisions of the general election laws shall be followed in calling and conducting said election where not inconsistent herewith.

Sec. 42. Said Court shall hold a special session on the fifth day after the holding of said election, or as soon thereafter as practicable for the purpose of canvassing the votes and certifying the results, and if a majority of the votes are against the sale of such described liquor said Court shall immediately make an order declaring the results of said vote, and absolutely prohibiting the sale of such liquor within the said political subdivision after thirty (30) days from the date of declaring the result thereof, and thereafter until such time as the qualified voters therein may thereafter at a legal election held for such purpose by a majority vote, decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of, and holding said election, and counting and returning the votes, and declaring the results thereof.

Sec. 43. The order of said Court

declaring the result and prohibiting the sale of liquor shall be published for four (4) weeks in some newspaper published in the county wherein such election has been held. If there be no newspaper published in the county, then the County Judge shall cause publication to be made by posting copies of said order at three public places within the county for the aforesaid length of time. The fact that publication has been made, in either mode, shall be entered by the County Judge on the minutes of the Commissioners Court. An entry thus made, or a copy thereof certified under the hand and seal of the Clerk of the Court shall be sufficient prima facie evidence of such fact of publication.

Sec. 44. If a majority voting at such election vote for the sale of such described liquor, the Court shall make an order declaring the result and if a majority at such election shall vote to permit the sale of such described type of liquor of such alcoholic content the Court shall make an order declaring the result and have the same entered of record in the office of the clerk of said Court, whereupon it shall be lawful in such political subdivision to manufacture, sell and distribute liquor such as may have been legalized by said election and thereafter until such time as the qualified voters therein may thereafter at a legal election held for that purpose by a majority vote decide otherwise, and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of holding said election and counting and returning the votes and declaring the results thereof.

Sec. 45. The last preceding sections shall not be so construed as to prohibit the sale of pure alcohol for scientific, mechanical, industrial, or manufacturing purposes, or of wines to church officials for sacramental purposes, or of alcoholic stimulants where the same shall have been prescribed by a regular practicing physician by a written prescription, dated and signed by him as is hereinbefore provided; and provided further that this section shall not be construed so as to prevent any person from bringing to his home, for the personal use of himself and his family, liquors purchased from the Board.

Sec. 46. No provision of this Act shall, by reason only that such product

contains liquor, prevent the sale of any perfume, lotion, tincture, varnish, dressing fluid, extracts, or acid vinegar, or of any official medicinal or pharmaceutical preparations, or acid vinegar, or of any patent or proprietary medicine intended solely for medicinal purposes.

Sec. 46a. All drinkable whiskey sold in this State, which is not sold upon the bona fide prescription of a physician made, filed and proven as provided by law, shall be conclusively presumed to be sold for beverage purposes.

Sec. 47. Upon application in the prescribed form being made to any employee, authorized by the Board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted such permit, for the purchase of liquor under this Act, the employee shall issue to the applicant a permit of the class applied for, as follows:

a. Where the applicant is for an individual permit and is made by an individual of the full age of twenty-one (21) years, an individual permit in the prescribed form entitling the applicant to purchase distilled liquor for beverage purposes; and fee for such permit to be fifty cents.

b. Where the application is for a special permit and is made by a physician, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health or as a home devoted exclusively to the care of aged people; the fee for such permit to be fifty cents.

c. Where the application is for a special permit by a person engaged within the State in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, a special permit in the prescribed form entitling the applicant to purchase alcohol for the purpose named in the permit, at such fee as may be fixed by the Board.

d. Where the application is for a special permit by a manufacturer to import alcohol, malt and other materials containing alcohol to be used in the manufacture of liquor, or other products under the regulations, at such fee as may be fixed by the Board.

e. Where the application is for a special permit by a person operating a drug store to purchase liquor to be

thereafter sold by such person on the prescription of a physician, under the regulations, at such fee as may be fixed by the Board.

Sec. 48. 1. Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

2. No person shall apply in any false or fictitious name for the issuance to him of a permit, and no person shall furnish a false or fictitious address in his application for a permit.

3. Nothing in this Act shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any source whatsoever, whether from within the limits of the State of Texas or from outside the State; nor shall any fee be charged, directly or indirectly, for the exercise of this right. The Board shall have the power and authority to make rules and regulations concerning the importing of any such wine, for the purpose of preventing any unlawful use of such right.

Sec. 49. No permit shall be valid or be accepted or used for the purchase of liquor until the applicant for the permit has written his signature thereon in the prescribed manner, for the purpose of identification as the holder thereof, in the presence of the employee to whom the application is made.

Sec. 50. No individual permit shall be issued to any corporation, partnership, or other unincorporated association of individuals.

Sec. 51. Every permit shall expire at midnight on the thirty-first day of December of the year for which the permit was issued.

Sec. 52. Where the holder of any permit issued under this Act violates any provision of this Act or of the regulations or is otherwise disqualified from holding a permit, the Board upon proof to its satisfaction of the fact or existence of such violation, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the Board sees fit, or may cancel the permit.

Sec. 53. Upon receipt of notice of the suspension or cancellation of his

permit, the holder of the permit shall forthwith deliver up the permit to the Board. Where the permit has been suspended only, the Board shall return the permit to the holder at the expiration or termination of the period of suspension. Where the permit has been suspended or cancelled, no employee shall knowingly issue to the person whose permit is suspended or cancelled a permit under this Act until the end of the period of suspension or within the period of one year from the date of cancellation.

Sec. 54. Where any permit is presented to an employee by a person who is not the holder of the permit, or where any permit which is suspended or cancelled is presented to an employee, the employee shall retain the permit in his custody and shall forthwith notify the Board of the fact of its retention.

Sec. 55. Any physician who deems liquor necessary for the health of a patient, whom he has seen or visited professionally may give to the patient a prescription therefor, signed by the physician, and may charge for same, but no prescription shall be given by a physician except to bona fide patients in cases of actual need, and only when in the judgment of the physician the use of liquor as a medicine in the quantity prescribed is necessary.

Sec. 56. Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people may, if he holds a special permit under this Act for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medical purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in case of actual need and every person in charge of an institution who administers liquor in evasion or violation of this Act shall be guilty of a violation of this Act.

Sec. 57. No person shall transport into this State or between incorporated towns or cities, in this State, upon any public highway, any

distilled liquor, unless the person accompanying and in charge of such shipment shall have present, and available for exhibition such bills of lading, evidence of ownership, or shipment, as the Board may, by rules and regulations require, and no persons shall refuse to exhibit, or permit to be read, or examined, any such bills of lading, evidence of ownership, or shipment by any agent or employee of the Board, or any peace officer of this State.

Sec. 58. If any person shall forge or counterfeit or cause or permit to be forged or counterfeited any stamp, die, plate, official signature, certificate, evidence of tax payment, permit, license, or other instrument, or any part of any stamp, die, plate, official signature, certificate, evidence of tax payment, permit, license, or other instrument, which has been provided for in this Act, or which shall hereafter be provided for, or shall knowingly utter, use or pass the same, he shall be deemed guilty of a felony and shall be punished by confinement in the State penitentiary for any term of years not less than one or more than five.

Sec. 59. If any section, paragraph, sentence or phrase of this Act be declared invalid by a Competent Court, then such invalid portion shall not in any way affect the remainder of this Act, and it is hereby declared as the legislative intent that the remainder of this Act would have been passed by the Legislature notwithstanding the invalidity of such section, paragraph, sentence or phrase.

Sec. 60. Licenses to sell beer, issued for any part of the calendar year 1935, shall not be affected by the terms of this Act, excepting (a) that all such licenses shall be entitled to sell beer in all portions of Texas, excepting in such political subdivisions which voted local option prior to May 1, 1919, and wherein local option has thereafter been abolished, and (b) all licenses to sell beer which are issued after the effective date of this Act shall be issued by the Board under the terms of this Act.

Sec. 61. All of the provisions of Chapter 116, Acts Regular Session, Forty-third Legislature, and all amendments thereto, shall apply to liquors that do not contain alcohol in excess of four per cent by weight unless otherwise herein expressly pro-

vided; and such Act shall remain in full force and effect in all respects where the provisions thereof are not in conflict with this Act; and in all cases of conflict with this Act, the provisions of said Chapter 116 and its amendments are hereby repealed.

Sec. 62. The Acts of the Second Called Session of the Thirty-sixth Legislature, Page 228, Senate Bill 143, Chapter 78, and all subsequent amendments thereto and all other laws in so far as such laws conflict with the provisions of this Act are hereby expressly repealed.

Sec. 63. The fact that there is now no existing Statute which seeks to adequately regulate the sale of alcoholic liquor in this State, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

HILL

Read.

The amendment by Senator Hill lost by the following vote:

Yeas—9.

Beck.	Martin.
Burns.	Nelson.
Collie.	Sanderford.
DeBerry.	Woodruff.
Hill.	

Nays—17.

Blackert.	Poage.
Cotten.	Rawlings.
Davis.	Redditt.
Hornsby.	Small.
Isbell.	Stone.
Moore.	Sulak.
Neal.	Van Zandt.
Neal.	Westerfeld.
Pace.	

Absent—Excused.

Fellbaum.	Regan.
Holbrook.	Shivers.
Hopkins.	

Amend S. B. No. 11, as amended, page 24, sub-Section "f" by striking out all of Section "f."

WESTERFELD,
POAGE.

Read and pending.

Motion for Previous Question.

Senator Woodruff moved that the Senate order the previous question on the pending amendment and the engrossment of S. B. No. 11 as amended.

The motion was seconded.

The motion lost by the following vote:

Yeas—10.

Blackert.	Nelson.
Davis.	Oneal.
DeBerry.	Pace.
Hill.	Poage.
Hornsby.	Woodruff.

Nays—16.

Beck.	Rawlings.
Burns.	Redditt.
Collie.	Sanderford.
Cotten.	Small.
Isbell.	Stone.
Martin.	Sulak.
Moore.	Van Zandt.
Neal.	Westerfeld.

Absent—Excused.

Fellbaum.	Regan.
Holbrook.	Shivers.
Hopkins.	

The amendment by Senator Westerfeld was adopted by viva voce vote.

Amend S. B. No. 11 as amended, by striking out the word "of" on page 10, line 13, after the word "prescription," and inserting "issued in the legitimate practice of medicine by"

BECK.

Read and adopted.

Amend S. B. No 11, as amended, page 16, line 44, Section 37, by adding after the word "vote," the following: "of those voting at such election."

RAWLINGS.

Read and adopted.

Amend S. B. No. 14, Section 44, page 18, line 52, by adding after the word "liquors" the word "knowingly"

RAWLINGS.

Read and adopted.

Amend S. B. No. 11, as amended, Section 42, page 17, line 64, by

adding after the word "liquors," the word "knowingly"

RAWLINGS.

Read and adopted.

Amend S. B. No. 11, as amended, Section 41, page 17, by striking out the last paragraph of the Section beginning line 44 and ending with line 48.

RAWLINGS.

Read.

Motion to Table.

Senator Woodruff moved to table the amendment by Senator Rawlings. The motion to table prevailed by the following vote:

Yeas—13.

Beck.	Oneal.
Burns.	Pace.
DeBerry.	Poage.
Hill.	Small.
Hornsby.	Van Zandt.
Neal.	Woodruff.
Nelson.	

Nays—12.

Blackert.	Rawlings.
Collie.	Redditt.
Cotten.	Sanderford.
Davis.	Stone.
Martin.	Sulak.
Moore.	Westerfeld.

Present—Not Voting.

Isbell.

Absent—Excused.

Fellbaum.	Regan.
Holbrook.	Shivers.
Hopkins.	

Amend S. B. No. 11 as amended, Section 15, as amended, by adding thereto sub-Section "(t)" to read as follows:

(t) "The Board may issue a license to any dining car company, sleeping car company, railroad company or railway company operating in this State, which shall authorize the holder thereof to keep for sale and to sell in its dining cars, sleeping cars, buffet cars, observation cars and any other cars used for transportation or accommodation of passengers, malt and vinous beverages and alcoholic liquors for consumption in sealed containers of less than one pint. Surety bond shall not be

required from such companies. Every such license shall expire on December 31st of the year in which it is issued and the license fee thereon shall be subject to proration. Each such license shall be good throughout this State as a State license. Only one such license shall be required for all cars operated in this State by the same owner; and no further license shall be required or tax levied by any county, city or village for the privilege of selling malt and vinous beverages and spiritous liquors for consumption in such cars. Nothing in this Act contained shall apply to or affect the right of holders of such licenses to transport within this State or to import into this State malt and vinous beverages and spiritous liquors to be kept for sale or to be sold while actually enroute in the cars of such licensees. Nothing in this Act shall be construed to forbid or prevent the sale of malt and vinous beverages and spiritous liquors by the holder of such license on trains passing through prohibited territory. Each such licensee shall pay a license fee of ten dollars per annum for each of the average number of dining cars, buffet cars or club cars operated daily in this State."

"Provided no intoxicating liquor shall be sold in dry territories and in the event this paragraph is declared unconstitutional it shall not effect any other portions of this Act."

RAWLINGS.

Read.

Motion to Table.

Senator Woodruff moved to table the amendment.

The motion to table prevailed by the following vote:

Yeas—18.

Beck.	Neal.
Burns.	Nelson.
Collie.	Oneal.
Cotten.	Pace.
Davis.	Poage.
DeBerry.	Redditt.
Hill.	Small.
Hornsby.	Van Zandt.
Isbell.	Woodruff.

Nays—8.

Blackert.	Sanderford.
Martin.	Stone.
Moore.	Sulak.
Rawlings.	Westerfeld.

Absent.

Holbrook.

Absent—Excused.

Fellbaum.	Regan.
Hopkins.	Shivers.

Amend S. B. No. 11 as amended, by striking out the word "Act" in line 53, sub-Section "p" of Section 15 on page 10 and insert in lieu thereof the word "Section."

SMALL,
VAN ZANDT,
RAWLINGS.

Read and adopted.

Amend S. B. No. 11, as amended, by striking out the figure 13 in line 41, sub-Section B of Section 63 on page 28, and inserting in lieu thereof the figure "63."

SMALL,
RAWLINGS,
VAN ZANDT.

Read and adopted.

Amend S. B. No. 11, as amended, by amending the caption to conform to the body of the bill.

WOODRUFF.

Read and adopted unanimously.

Amend S. B. No. 11, as amended, by striking out the first paragraph of Section 41 and add the following:

"Any person, whether as agent, employee or principal, who shall violate any provision of this Act except a provision for which a specific penalty is provided shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not less than One Hundred (\$100.00) Dollars nor more than One Thousand or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment. In case any provision of this Act is violated by a corporation or by the executive officer or agent of a corporation it shall be the duty of the Attorney General to institute appropriate proceedings to forfeit the charter of such corpor-

ation and on proof of such violation by such officer or agent of such corporation the charter of such corporation shall be forfeited by appropriate order of the court hearing such proceedings."

**SMALL,
RAWLINGS.**

Read and pending.

Motion for Previous Question.

Senator Pace moved that the Senate order the previous question on the pending amendment and the engrossment of S. B. No. 11.

The motion was duly seconded.

The previous question was ordered by the following vote:

Yeas—14.

Blackert.	Oneal.
Burns.	Pace.
Davis.	Poage.
DeBerry.	Redditt.
Hill.	Small.
Hornsby.	Westerfeld.
Nelson.	Woodruff.

Nays—11.

Beck.	Neal.
Collie.	Rawlings.
Cotten.	Sanderford.
Isbell.	Stone.
Martin.	Sulak.
Moore.	

Present—Not Voting.

Van Zandt.

Absent—Excused.

Fellbaum.	Regan.
Holbrook.	Shivers.
Hopkins.	

The pending amendment was adopted by viva voce vote.

S. B. No. 11 was read the second time, as amended, and passed to engrossment by the following vote:

Yeas—17.

Beck.	Neal.
Burns.	Nelson.
Collie.	Oneal.
Cotten.	Pace.
Davis.	Poage.
DeBerry.	Small.
Hill.	Van Zandt.
Hornsby.	Woodruff.
Isbell.	

Nays—7.

Blackert.	Stone.
Moore.	Sulak.
Rawlings.	Westerfeld.
Sanderford.	

Absent.

Martin.

Absent—Excused.

Fellbaum.	Regan.
Holbrook.	Shivers.

(Pair Recorded.)

Senator Redditt (present) who would vote yea, with Senator Hopkins (absent) who would vote nay.

Senator Van Zandt received unanimous consent to add his name to S. B. No. 11.

Senators Moore, Rawlings and Sulak received unanimous consent to withdraw their names as co-authors of S. B. No. 11.

On motion of Senator Small, the constitutional rule requiring bills to be read on three several days was suspended and S. B. No. 11 was put on its third reading and final passage by the following vote:

Yeas—21.

Beck.	Nelson.
Blackert.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Redditt.
Davis.	Sanderford.
DeBerry.	Small.
Hill.	Van Zandt.
Hornsby.	Westerfeld.
Isbell.	Woodruff.
Neal.	

Nays—4.

Moore.	Stone.
Rawlings.	Sulak.

Absent.

Holbrook.	Martin.
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Absent—Excused.

Fellbaum.	Regan.
Hopkins.	Shivers.

Amend S. B. No. 11, as amended, page 6, line 59, by striking out the words "twenty-five hundred dollars (\$2,500)" and inserting in lieu

thereof the words "seven hundred fifty dollars (\$750.00)."

STONE.

Read.

The amendment was lost by the following vote:

Yeas—3.

Rawlings. Sulak.
Stone.

Nays—22.

Beck.	Neal.
Blackert.	Nelson.
Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
Davis.	Redditt.
DeBerry.	Sanderford.
Hill.	Small.
Hornsby.	Van Zandt.
Isbell.	Westerfeld.
Moore.	Woodruff.

Absent.

Holbrook. Regan.
Martin. Shivers.

Absent—Excused.

Fellbaum. Hopkins.

Amend S. B. No. 11, as amended, page 7, line 38, by striking out the words "three hundred fifty dollars (\$350.00)" and inserting in lieu thereof "two hundred dollars (\$200.00)."

STONE.

Read and pending.

Previous Question.

Senator Poage moved that the Senate order the previous question on the pending amendment and final passage of S. B. No. 11.

The motion was seconded.

The motion prevailed by the following vote:

Yeas—19.

Beck.	Nelson.
Blackert.	Oneal.
Burns.	Pace.
Cotten.	Poage.
Davis.	Redditt.
DeBerry.	Small.
Hill.	Van Zandt.
Hornsby.	Westerfeld.
Isbell.	Woodruff.
Neal.	

Nays—6.

Collie.	Sanderford.
Moore.	Stone.
Rawlings.	Sulak.

Absent.

Holbrook. Shivers.
Martin.

Absent—Excused.

Fellbaum. Regan.
Hopkins.

The pending amendment by Senator Stone failed of adoption, not having received the required two-thirds vote.

Senator Collie received unanimous consent to send up the following amendments:

Amend S. B. No. 11, as amended, by adding a new subsection to Section 10 and to be known as Subsection "f" as follows:

(f) That the Board believes, or has reason to believe, that the applicant will sell or knowingly permit any agent to sell liquor in dry territory.

COLLIE.

Read and adopted by the following vote:

Yeas—25.

Beck.	Oneal.
Blackert.	Pace.
Burns.	Poage.
Collie.	Rawlings.
Cotten.	Redditt.
Davis.	Sanderford.
DeBerry.	Small.
Hill.	Stone.
Hornsby.	Sulak.
Isbell.	Van Zandt.
Moore.	Westerfeld.
Neal.	Woodruff.
Nelson.	

Absent.

Holbrook. Martin.

Absent—Excused.

Fellbaum. Regan.
Hopkins. Shivers.

Amend S. B. No. 11, as amended, by adding the following after the letters "44" in line 52, Section e, page one:

"and Subsection L of Section 62."
COLLIE.

Read and adopted by the following vote:

Yeas—25.

Beck.	Oneal.
Blackert.	Pace.
Burns.	Poage.
Collie.	Rawlings.
Cotten.	Redditt.
Davis.	Sanderford.
DeBerry.	Small.
Hill.	Stone.
Hornsby.	Sulak.
Isbell.	Van Zandt.
Moore.	Westerfeld.
Neal.	Woodruff.
Nelson.	

Absent.

Holbrook. Martin.

Absent—Excused.

Fellbaum. Regan.
Hopkins. Shivers.

Amend S. B. No. 11, as amended, line 3, Section 57, Sub-section 1, page 25, by adding the following paragraph:

"It is expressly provided however, it shall be unlawful for any corporation, dealer, distributor, or any other person to print, publish or post any outdoor advertising which is adorned by pictures or any scene depicting the drinking or use of such liquors, wines or beverages, and the penalty for violating this provision is provided in Section 63, Subsection L, page 28 of this Act," and amend caption to conform.

COLLIE.

Read and failed of adoption by the following vote:

Yeas—12.

Beck.	Isbell.
Burns.	Neal.
Collie.	Nelson.
Cotten.	Oneal.
DeBerry.	Pace.
Hill.	Woodruff.

Nays—13.

Blackert.	Sanderford.
Davis.	Small.
Hornsby.	Stone.
Moore.	Sulak.
Poage.	Van Zandt.
Rawlings.	Westerfeld.
Redditt.	

Absent.

Holbrook. Regan.
Martin. Shivers.

Absent—Excused.

Fellbaum. Hopkins.

Point of Order.

Senator Moore raised a point of order on further consideration of the bill, as it was now 12 o'clock, and in a minute it would be Wednesday and House bill day.

The Chair, Lieutenant Governor Walter F. Woodard, overruled the point of order.

S. B. No. 11 was read third time and finally passed by the following vote:

Yeas—19.

Beck.	Neal.
Blackert.	Nelson.
Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
Davis.	Redditt.
DeBerry.	Small.
Hill.	Van Zandt.
Hornsby.	Woodruff.
Isbell.	

Nays—6.

Moore.	Stone.
Rawlings.	Sulak.
Sanderford.	Westerfeld.

Absent—Excused.

Fellbaum. Martin.
Holbrook. Regan.
Hopkins. Shivers.

Motion to Recess.

Senator Woodruff, at 11:55 o'clock p. m., moved that the Senate recess until 10:00 o'clock a. m. Wednesday.

Motion to Adjourn.

Senator Hornsby, at 11:55 o'clock p. m., moved that the Senate adjourn until 10:00 o'clock a. m. Wednesday.

The motion to adjourn prevailed by viva voce vote.

Petitions and Memorials.

APPENDIX.

**ADDRESS BY SENATOR T. J. HOLBROOK AT THE RE-INTERMENT
OF THE REMAINS OF SERGEANT JAMES AUSTIN SYLVESTER,
FLAG BEARER AT THE BATTLE OF SAN JACINTO,
AT THE STATE CEMETERY, AUSTIN, TEXAS,
ON NOVEMBER 5, 1935.**

Mr. Master of Ceremonies, and Fellow Citizens:

Mindful of a debt of gratitude which our generation owes to one of the great pioneers of Texas, who performed an indispensable part in establishing the young Republic, we are met this afternoon to re-inter the dust of James Austin Sylvester. In fulfilling this task we are paying an obligation more than a half century overdue.

In order to learn something of what character of man he was, and what moved him in his efforts to free Texas from the tyrannical rule of a despot, it is necessary to take in consideration his youth, as well as the conditions, the time, and the place, which made the setting for his childhood and his young manhood.

He was born in Baltimore, Maryland, in 1807, and before reaching his maturity, moved with his parents to Newport, Kentucky. There he obtained the rudiments of a meager education, and later found employment as a printer's devil with the Cincinnati Enquirer, which profession, aside from his military career in Texas, he followed to the end of his life.

Being on the staff of what was then the greatest newspaper in the West of that day, he became intensely interested in the Texas Revolution and the fight our people were making for Constitutional Government; and at the first opportunity joined them in their efforts to obtain freedom for themselves and their posterity, by establishing an independent Government fashioned after that of the United States.

As a boy he could look to the East, across the Alleghenies, and catch something of the spirit of his forefathers, who freed America from the British rule. He saw Daniel Boone crossing this great divide, and setting up in his adopted State of Kentucky the first advance of the thirteen colonies, which culminated on the shores of the Pacific Ocean.

He looked to the West, Beyond the Mississippi, and viewed a vast stretch of natural resources, which to his youthful imagination called for the next advance. In the fullness of time this second advance was made; and the heroes at San Jacinto welded together a Union of States which stretched from the Atlantic to the Pacific; and secured for themselves and the generations which would follow them, a victory no less renowned than that which made deathless the story of Washington and his soldiers at Yorktown.

No more engaging scene in American history can be found than that which depicts the efforts and accomplishments of those men and women around Cincinnati, Covington and Newport, in freeing Texas from the throes of a tyrant, and in constructing a second Republic on the continent of North America. It will be remembered that the people of these communities furnished the two cannons, which aided greatly the cause of our infant armies on the field of battle. It was there, on December 18, 1835, that the subject of these ceremonies, joined Captain Sidney Sherman and fifty others in forming a company for the purpose of aiding Texas in her impending struggle for independence. They left immediately for Nacogdoches, arriving there in the middle of the bleak winter of 1836.

The proffer of aid was greatly appreciated by General Houston and other patriotic Texans.

The war records show that Captain Sherman's company left Nacogdoches on February 29, 1836, with Gonzales as their objective. It is evident, however, that Sylvester did not tarry in Nacogdoches after his arrival there; for on January 10, 1836, he was commissioned by Henry Smith, the provisional Governor of Texas, with headquarters at San Felipe, as a captain in the Reserve Army. This fact is verified by the original commission, which rests in the archives of Rosenberg Library at Galveston.

On March 13, 1836, we next find Captain Sylvester at Gonzales, when and where the Texas Army was re-organized. Captain Sherman was named Lieutenant-Colonel of the First Regiment of volunteers, and Captain Sylvester was named Second Sergeant and Color Bearer. After the fall of the Alamo, he marched with Houston and his army, from Gonzales to San Jacinto, where he lifted himself from obscurity to immortality.

He was the proud color bearer in this sixteenth decisive battle of the world, and it is well within reason to believe that the bravery displayed by him on that occasion may have meant freedom instead of defeat to this mighty empire of the South and West. The ladies of Newport, Kentucky made that flag, and after the battle of San Jacinto, General Houston graciously gave it to Mrs. Sidney Sherman, the wife of General Sidney Sherman, who brought Sylvester to Texas, and who was in command of the left wing of Houston's army at the battle of San Jacinto. On August 8, 1896, the daughters of General and Mrs. Sidney Sherman, through the Daughters of the Republic, presented it to the State of Texas.

Properly protected and framed, it now reposes in the State Capitol on the wall behind the Speaker's stand in the House of Representatives.

Conceived in a spirit of liberty, and wrought out by the hands of these women of Kentucky, it had depicted upon its sacred folds the likeness of a stalwart maiden standing in a wilderness, with her right hand slightly declining to her side and her left raised high with a sword supporting a scroll, upon which is lettered the words "Liberty or Death." These are the words which caused Patrick Henry to fire the hopes of the Colonists in an earlier day, and which eventuated in the birth of our common country. As long as freedom endures, and patriotism survives, this flag, coupled with that of the Lone Star, will emblemize the hopes and aspirations of the founders of the Republic and the State.

It is my hope that at no distant date some fitting memorial may be erected on this hallowed hill, alongside that of Johanna Troutman, so as to fittingly memorialize the work of these citizens of Kentucky, who constructed it and brought it here in defense of the principles for which our pioneer citizens so nobly strived.

On the next day after the memorial battle, Sylvester, while scouting near Vines Bridge in search of deer, saw a man lying in some tall grass. Upon approaching him, he found that the man was reluctant to move. He did finally arise and accompanied Sylvester and his companions to camp. Along the way some of the Mexican prisoners recognized this man and hailed him as "El President!" He was indeed Antonio Lopez de Santa Anna, President of Mexico and Commander of the enemy army.

Sylvester thus, single handed and alone, captured the chief offender, and aided largely in gaining the freedom of Texas.

After the actual scenes of this occasion had closed forever, in an humble way, he returned to Nacogdoches, and on June 18, 1836 received an honorable discharge from the army, at the age of twenty-nine years. On August 3, 1836, General Houston presented him with a written tribute of regard for his valiant conduct in line of battle, and for his capture of Santa Anna, the self-styled Napoleon of the West, and with it the thanks of Santa Anna for his generous conduct towards him.

This quiet, unostentatious man, followed his trade as a printer in Texas for seven years after the war drums had been silenced. He then removed to New Orleans, where he worked as a printer on the New Orleans Piccayune, until he died on April 9, 1882. He never boasted of his feats, either in war or in peace; but did on one occasion take note of an error made at Austin, Texas, in a speech by General J. B. Robinson, in which he (Robinson) claimed to be the captor of Santa Anna. This he completely refuted by history and facts which are beyond controversy. In that communication he tenderly referred to General Sidney Sherman as "My old and honored Commander and friend."

The fine spirit which moved him to show respect for his superiors was the guiding compass of his life. He was not selfish, and wanted no favors bestowed upon him which could not be shared by others. In his fight for freedom, territorial triumph was not the cause that fired his soul. Unlike

a Hannibal or a Bonaparte, he craved no vengeance against a helpless adversary, no flare for personal ambition, nor greed for gold. His was more the nature of Miltiades at Marathon, Wellington at Waterloo, or Washington at Yorktown. In espousing the cause of Texans, he merely wanted to lift the yoke of Tyranny from the backs of free men.

Unlike some of our meteoric careers that have gleamed and flashed across the pages of history, his was a quiet and wholly unselfish life. So reserved was he, that the forty years spent in New Orleans after he left Texas, was almost blank to his associates here. He seldom wrote letters, and chose to run along quietly in the work of his chosen profession. This perhaps, is one of the reasons why he has not received recognition as one of our foremost benefactors. That he is by every fact in history entitled to this distinction, there can be no doubt.

It was given him to set a new flag which brought victory to those who supported him in arms, and which eventually added to our common country one third of its present territorial boundaries. In this, the United States, as well as Texas, owe him a debt of gratitude which never will be paid in full. It will some day be made clear, as it has not yet been done, that this band of Kentuckians who came with Sherman and Sylvester to succor Houston's army in time of need, composed the needed group which won our independence, and to whose names we should give praise forever, and forevermore.

In contemplating the work Sergeant Sylvester did in this, one of the World's decisive battles, I am reminded that Color Bearers and their emblems have formed important part both in victory and defeat since wars began. At Actium and Salamis, as at Thermopylae and the Alamo, they gave zest and force to contending armies and the inspiration generated by them on the field of battle has been evident from the day on which Joshua commanded the Sun to stand still on the plains of Gideon, to the conquest of Aduawa by an Italian conqueror. Who can say but for the brave acts of Sylvester at San Jacinto, Texas would have been free. It is certain that the flag carried by him, in all probability, was the source of inspiration which carried Houston's men to victory, and for this his name and his fame should be honored and accelerated by Texans from generation to generation.

Captain Sylvester was never married, and never knew the loving care of wife or child. He did until the end, however, cherish an abiding affection for this glorious Lone Star State, which was the offspring of his youthful valor. In his young manhood he forsook all to make us free, and we honor ourselves on this occasion by bringing his dust here where it may find rest among kindred spirits.

Hard by this tomb repose the earthly remains of our great and mighty dead, who followed his flag in a relentless drive for victory. What a galaxy of immortals there were to greet him:

"On fame's eternal camping ground,
Where silent tents are spread;
While glory guards with solemn round
The bivouac of the dead."

On the green slopes of this State Valhalla, we have deposited here the earthly ashes, of Stephen F. Austin and Guy Bryan, of General Harde-man and Judge Hemphill, and a host of others of equal renown, who knew and loved him in his young manhood. If their spirits could now arise from this material clay, I doubt not but that of Sylvester would find a choice place in the depths of their affections.

It is not given us to know what the Great Spirit that stands back of all truth did with his soul, when it left the frail casket which bound it here. We can only hope that it found a better home, and that this universal desire for another and better life was not planted through tantalizing caprice. It must be so, for the earth, the heavens and the sea proclaim as much. All nature reveals another springtime; and through this phenomena we can well believe, the soul of man, which is king over all, is indestructible. For if this hope of another life beyond the grave is a vain

dream, and the spirit of man is annihilated by death like the flame of a candle blown out, then life itself is a tragedy so full of disappointments that he who dreads to die should fear to live.

And now, after fifty-two years of peaceful sleep at Odd Fellow's Rest in New Orleans, we shall place here in this sepulcher the mortal remains of James Austin Sylvester—hero number one of the battle of San Jacinto; with the hope that citizens of Texas of this and future generations, may look upon this modest tomb with approval; and with the assurance that, long after the elements of time and chance shall have devoured the modest monument which the State will place about his grave, the influence for good which he planted in this world, will increase in ever widening circles—that he will still live, remembered because of his deathless deeds.

Committee on Engrossed Bills.

Committee Room,
Austin, Texas, Nov. 5, 1935.
Hon. Walter F. Woodul, President of
the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. C. R. No. 9 carefully examined and compared and find same correctly engrossed.

DAVIS, Chairman.

Committee on Enrolled Bills.

Committee Room,
Austin, Texas, Nov. 5, 1935.
Hon. Walter F. Woodul, President of
the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. C. R. No. 5 carefully examined and compared and find same correctly enrolled.

POAGE, Chairman.

Committee Reports.

Committee Room,
Austin, Texas, Nov. 5, 1935.
Hon. Walter F. Woodul, President of
the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. B. No. 46, A bill to be entitled "An Act levying and imposing occupation taxes, in addition to those now prescribed by law, on certain industries and public utilities and natural resources; providing how the moneys so derived shall be allocated; creating the "Texas Old Age Assistance Fund," providing that this Act shall be cumulative of all laws now in force affecting the subjects treated; levying an occupation tax on gas, electric light, electric power, or water works, or water and light plants, unless municipally owned, and providing exceptions; * * * and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed with Committee Amendments

Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.

PACE, Chairman.

Committee Amendment No. 1.

Amend H. B. No. 46 by striking out the word "Electric" in Section 6.

Committee Amendment No. 2.

Amend H. B. No. 46, by striking out the word "truck" in the 3rd line of Section 6, page 7.

Committee Amendment No. 3.

Amend H. B. No. 46, page 7, Section 6, by adding after the word "bus", in line 3 of said section, the words "except buses operated wholly within the city limits of incorporated cities."

Committee Amendment No. 4.

Amending H. B. No. 46, Section 7, page 8, by striking out Section 7 and rewriting the section as follows: viz.:

"Every person, firm, corporation or association of persons manufacturing, distributing or selling malt syrup or malt extract within this State shall pay to the State a tax of Twenty-five cents (25c) per pound on all malt syrup or malt extract, whether or not same is flavored with hops or any similar flavor, sold, bartered, given away or exchanged; provided, however, nothing herein shall be construed to mean that said tax shall be levied on materials used in the manufacture of beer by any person licensed as a brewer or manufacturer of beer under the laws of this State, or in the manufacture of bakery products. The tax hereby imposed shall be paid and the stamps hereinafter provided for shall be affixed or attached by the person first having possession or ownership of such malt syrup or malt extract after same shall have come to rest in this State, unless such stamps shall have been affixed or attached by the manufacturer or distributor, and such

stamps shall be affixed or attached to every such container of malt syrup or malt extract which is intended to be distributed, sold or given away in this State. The tax hereby imposed shall be paid by the purchase of stamps from the State Treasurer of such design and denomination as shall be prescribed by him and the sum of Five Hundred Dollars (\$500) is hereby appropriated to the State Treasurer for the purpose of procuring the stamps herein authorized. It shall be the duty of each dealer, distributor or manufacturer to affix to each container of such malt syrup or malt extract a stamp or stamps so purchased from and furnished by the State Treasurer, which stamp or stamps shall be in the amount of the tax on the contents thereof. Such stamp or stamps shall be affixed to such container before it is sold, delivered or given away to the consumer or purchaser and the person making the sale to the purchaser or consumer shall cancel said stamp or stamps. The State Treasurer shall enforce the tax herein levied in like manner and with like authority as is conferred upon him by the provisions of Chapter 116, Acts of the Regular Session, Forty-third Legislature. It shall be unlawful for any person to sell, offer for sale, possess for the purpose of sale, barter or exchange any such malt syrup or malt extract without having first affixed thereto or thereon the stamp or stamps required by this Act. Any person violating the provisions of this Section shall be punishable by a fine of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500)."

Committee Amendment No. 5.

Amend H. B. No. 46, Section 2, page 4, by inserting the words "and more than 2500 inhabitants" immediately after the words "ten thousand (10,000) inhabitants."

Committee Amendment No. 6.

Amend H. B. No. 46 by striking out Section 15 of said bill.

Committee Amendment No. 7.

Amend H. B. No. 46 by striking out the period at the end of the second sentence in Section 3 and adding thereto the following:

"received from business done as aforesaid in cities and towns above

10,000 population according to the last United States census next preceding the filing of said report and an amount equal to one-fourth of one per cent of the gross receipts received from business done as aforesaid in cities and towns having a population of 2500 to and including 10,000 according to the last United States census next preceding the filing of said report."

Committee Amendment No. 8.

Amend H. B. No. 46 by striking out Section 4 of said bill.

Committee Amendment No. 9.

Amend H. B. No. 46 by striking out Section 5 of said bill.

Committee Amendment No. 10.

Amend H. B. No. 46 by striking out Section 13b of said bill.

Committee Amendment No. 11.

Amend H. B. No. 46 by striking out Section 4a of said bill.

Committee Amendment No. 12.

Amend H. B. No. 46 by striking out Section 14 of said bill.

Committee Amendment No. 13.

A proposal to amend House Bill tion 2, by adding in lieu thereof the No. 46, Section 11a thereof, subse- following:

TAX—Each individual, firm, club, copartnership, association, company or corporation, which conducts any fistic combat, boxing, sparring or wrestling match, contest or exhibition wherein the contestants or participants receive a money remuneration, purse or prize equivalent for their performances or services in same, and/or where an admission fee is charged or received, shall furnish to the Commissioner of Labor Statistics at Austin, Texas, within forty-eight (48) hours after the termination of such match, contest or exhibition, a daily verified report thereof showing the number of tickets sold, the various prices received therefor, and the amount of gross receipts for the total number of tickets sold therefor, and at the same time shall attach to the Commissioner of Labor's report legal tender or make proper form of money order or exchange payable to the State Treasurer in the amount of tax for six per

centum (6%) of the total gross receipts from the sale of tickets of admission to such contest, which tax shall be deposited to the credit of the "Boxing and Wrestling Enforcement Fund." No other fee or tax either general or local, than as herein provided, shall be assessed against or levied upon any such match, contest or exhibition, contestant or manager, or promoter thereof.

Section 6 of the Boxing and Wrestling Law of the State of Texas, Acts of the Regular Session of the Forty-third Legislature, Chapter 241, page 843, as amended at the Second Called Session of the Forty-third Legislature, effected May 29, 1934, is hereby in all things repealed.

Committee Amendment No. 14.

Amend House Bill No. 46 by striking out Section 8d of said bill.

Committee Amendment No. 15.

Amend Section 16, subsection (b), paragraph 3, page 20, line 23, by striking out the words and figures "ten cents (10c)" and substituting in lieu thereof the words and figures "two cents (2c);" and on line 26, by striking out the words and figures "twenty cents (20c)" and substituting in lieu thereof the words and figures "five cents (5c)."

Committee Amendment No. 16.

Amend H. B. No. 46 by striking out Section 10, paragraphs (a), (b), and (c) thereof, and substituting in lieu thereof the following:

That sub-Section 5 of Section 1, Chapter 10, Acts of the First Called Session of the 43rd Legislature, unnumbered paragraphs 9, 10, 11, and 12, pages 38 and 39, Acts of the First Called Session, 1933, be so amended as hereafter to be and read as follows:

"The license issued shall expressly provide that the licensee shall, in addition to the license fees paid, remit to the Treasurer of the State of Texas, through the State Comptroller, at the end of each race meeting such amounts as may be hereinafter provided received as commission of compensation by the licensee, as authorized by this Act. This fund, when received by the Treasurer, shall be held by him and credited as a Special Racing Fund.

"The expenses incurred and authorized by virtue of this Act, shall be payable out of the Special Racing Fund, not otherwise, and so much thereof as may be necessary is hereby appropriated and all amounts shall be paid upon accounts approved by the Chairman of the Racing Commission and warrants drawn against said fund by the Comptroller on the State Treasurer.

"The Treasurer of the State of Texas, in December of each year, shall make a complete statement of the amount he has received within the calendar year under the provisions of this Act. After there shall have been charged against this Fund the theretofore paid out operating expenses of the Racing Commission in that year as herein authorized, and the additional amount which the Racing Commission shall estimate as being required to be paid out in that year, and, in addition thereto, such amount as the said Racing Commission shall estimate as the expenses for the operating of the Commission for the next succeeding calendar year, the amount then remaining in this Fund shall be held for and disbursed thus, viz:

"After providing for the operating expenses of the Racing Commission as aforesaid, an amount equal to twenty-five (25) per cent of the funds remaining in the Special Racing Fund shall by the Treasurer of the State of Texas be paid into and credited to the available Public Free School Fund of the State as provided by the Constitution of the State of Texas. An amount equal to twenty (20) per cent of the funds then remaining in the Special Racing Fund shall be used by the Board of Control of the State of Texas to purchase, transport, and deliver for distribution well-bred and approved stallions and jacks throughout the State of Texas, and, in connection therewith, defray the actual reasonable expense incident to the purchase, transportation and maintenance of such animals, in order thereby to promote the breeding of better livestock in the State of Texas. After deducting from said Special Racing Fund the operating expenses of the Racing Commission as aforesaid, and after deducting

from said Special Racing Fund the said twenty-five (25) per cent going to the available Public Free School Fund, and after deducting the said twenty (20) per cent to be so used by the Board of Control of the State of Texas as aforesaid, the balance remaining in said Special Racing Fund, so far as it may be required, shall be used for the payment of the appropriations by the Legislature for the support and maintenance of the State Department of Agriculture as said appropriations for that Department shall be fixed and allowed by the Legislature of the State of Texas from time to time. It is further provided that any excess left in the Special Racing Fund shall be by the State Treasurer transferred to and become a part of the "Texas Old Age Assistance Fund" provided for in Section 1 of this House Bill No. 46.

"The licensee shall keep an accurate record of all receipts and disbursements during any racing meet authorized by the Texas Racing Commission to be conducted by said licensee, which books and records shall at all reasonable times be open to inspection of the Comptroller of Public Accounts of the State of Texas, and to the Texas Racing Commission or its duly qualified agents; and at the close of each racing meet held by such licensee, he shall remit to the Treasurer of the State of Texas through the Texas Racing Commission as follows: Where the pari mutuel turnover is not more than One Hundred Thousand Dollars (\$100,000.00), one-fourth (1/4) of the ten (10) per cent deducted by such licensee from the contributions of purchasers of certificates on horses to run first, second, and/or third in any given race; and where the pari mutuel turnover is more than One Hundred Thousand Dollars (\$100,000.00) for any such meet, thirty (30) per cent of the ten (10) per cent deducted by such licensee from the contributions of purchasers of certificates on horses to run first, second, and/or third in any given race. The licensee is hereby constituted trustee for the State of Texas to collect and remit the sums provided herein, and such sums shall constitute and be a trust fund belonging to the State of Texas. Failure of any person to collect and remit

any sums prescribed herein in accordance herewith shall constitute the offense of embezzlement, and upon conviction thereof, such person shall be punishable therefor as the law prescribes.

All laws or parts of laws in conflict herewith are expressly repealed.

Committee Amendment No. 17.

Amend Section 12 of House Bill 46 by inserting before the word "gas" each time it appears in said Section, the word "sweet" and by inserting the words "as sweet gas is now defined by law" after the word "gas" in the fourth line of Section 12 and by striking the words "and/or casing head" each time they appear in said section.

Committee Amendment No. 18.

Amend House Bill No. 46, after the word "Producer" in the third line on page 16, by adding the following:

"And provided, there shall be exempted from taxation under this section the gas produced from wells which do not produce in excess of (2,000,000) two million cubic feet daily production through open flow."

TENTH DAY.

Senate Chamber,
Austin, Texas,
November 6, 1935.

The Senate met at 10 o'clock a. m. pursuant to adjournment, and was called to order by Lieutenant Governor Walter F. Woodul.

The roll call disclosed a quorum, the following Senators being present.

Beck.	Nelson.
Blackert.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Rawlings.
Davis.	Redditt.
DeBerry.	Regan.
Hill.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Hornsby.	Stone.
Isbell.	Sulak.
Martin.	Van Zandt.
Moore.	Westerfeld.
Neal.	Woodruff.

Absent—Excused.

Fellbaum.